Vol. II

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1[redacted]1920

No. [redacted]101

THE COCA-COLA COMPANY, PETITIONER,

vs.

THE KOKE COMPANY OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 30, 1919.

CERTIORARI AND RETURN FILED JULY 21, 1919.

(27,093)

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(Deposition of Asa G. Candler.)

Redirect Examination by Mr. HIRSCH.

Mr. Mayfield stored all his stuff in my warehouse—that's what he told me—he was going out of that place and stored the things there. They consisted of "Wine of Coca," bottles for "Wine of Coca," [375] and labels, hair dye bottles and labels connected with the manufacture, a whole lot of cough syrup and things connected with that, and "Compound Syrup of Stillinga"—it was an alternative preparation—and I think that's all. Yes, sir; they were all medicines. It's my impression that Mr. Mayfield left Atlanta at that time. He went to Mr. W. E. Hayne, who was then in business in this city and tried to sell him "Yum Yum"—said it was made by the "Coca-Cola" formula; well, he said he didn't want any "Yum Yum," and required him to sell him "Coca-Cola" and bill it as such. I got the bill and got after Mr. Mayfield about it—that and another one—he told me he had a barrel of "Coca-Cola" that he had gotten in exchange for something and he was selling it out, but he would quit it. The other one was Dr. Theodore Schumann. He told me he didn't manufacture it.

Recross-examination by Mr. LITTLETON.

Yes, that statement about Mayfield selling to Hayne and Schumann is just their statement to me.

(Objected to by defendants because hearsay. Objection overruled. Exception.)

I saw the bills; I haven't got them now. (Same objection. Overruled. Exception.)

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #67, #73, #74, #75, #76, and #77.)

Deposition of John Slaughter Candler, for Plaintiff.

JOHN SLAUGHTER CANDLER.

Direct Examination by Mr. HIRSCH.

I am a lawyer and a member of the firm of Candler, Thomson & Hirsch. I was admitted to the Bar in 1882 and practiced law until 1886, when I was made prosecuting attorney of the Stone Mountain Circuit in this State. In 1896 I was made Judge of the Circuit Court here, which position I held until I was elected an Associate Justice in the Supreme Court of this State in 1902. I resigned as associate justice in 1906 and have been practicing law since then. **[376]**

Yes, sir; I know F. M. Robinson, Ed. Holland and Dr. J. S. Pemberton, very well. The first time I ever saw Mr. Robinson he was introduced to me by Ed. Holland. He wanted to consult me about a matter in connection with "Coca-Cola"—that's the first time I ever heard of "Coca-Cola." He came to see me with reference to some fuss which they had had with Dr. Pemberton in connnection with his having disposed of "Coca-Cola" to some one else,—to some other parties. I went down to the place to see Dr. Pemberton. My recollection is that at that time he was doing business in the house that had been the home of old man Holland and belonged to Ed. Holland's wife, on Marietta Street. I went down there and was told there that he was sick at home and I went out to see him with reference to the complaint that Mr. Robinson and Mr. Holland made to me, at his home. That complaint was that he had trans-

(Deposition of John Slaughter Candler.)

ferred to a company with which they were connected "Coca-Cola" and their complaint was against him that he now claimed he had transferred it to some one else and that he had never given it to that company and they wanted to employ me with reference to that matter. I accepted their employment to the extent of going to see him—I was a young lawyer, they didn't have anything and I didn't, very much, and I went to see Dr. Pemberton with reference to seeing whether they had any case or not. When I went down to see him he was then living in an old cottage on what is now DeKalb Avenue but what was then Decatur Street, just this side of Mooreland Avenue, almost opposite a little church down there—it was a small cheap house, a cottage, and he and his wife were living there, and I found him lying on his bed, but his coat off. I remember very well, his wife met me and I went to see him and told him what they had said. Dr. Pemberton was a very quiet sort of man and I told him what they had stated and he said, "Well, they are mistaken," he says, "I never did put this into that business, they have got no interest in it whatever, and I have done what they say, but I never did give them any rights in it, nor their company never had any rights in it, and I had a right to do it and I did." [377] He then remarked, "It don't make much difference, though, even if they did have any rights. I don't know how you would get anything out of me"—that's the way he put it, "I don't know how you would get anything out of me." I possibly might complete that—that was about the

sum and substance of that interview, as I recall it, exactly. Finally Mr. Robinson came to see me to know the result and I told him what Dr. Pemberton said and then I laughingly told him I didn't see much chance—I didn't care for his case on any contingent fee on that sort of statement and that was the end of it.

(There was no cross-examination of this witness.)

Deposition of Willis Erwin Venable, for Plaintiff.

WILLIS ERWIN VENABLE.

Direct Examination by Mr. HIRSCH.

I am 72 years old, reside at West End, Gordon Street, Atlanta, and I came here in January, 1867. I have been living here, with the exception of thirteen years, all the time since then. Yes, sir, I was in Atlanta in 1887. Yes, sir, I recognize the signatures on Plaintiff's Exhibit #78 and one of them is mine. The others are Dr. J. S. Pemberton and George S. Lowndes. Yes, sir, I certainly do recognize all those signatures. I don't remember the date exactly when those signatures were signed, but I remember signing it. Yes, sir, that's my signature right there and that's Dr. Pemberton's and that's Mr. Lowndes. Well, there was some kettles and—I don't remember just what there was—but there was a lot of stuff that was used in the manufacturing of "Coca-Cola" that was turned over to us with this paper. Yes, sir, I recognize the paper marked Plaintiff's Exhibit #79—that's a paper that was turned over to us when we bought these things according to this paper, yes.

(Deposition of Willis Erwin Venable.)

sir. Yes, sir; the paper marked Plaintiff's Exhibit #80 bears my signature and that of Mr. Lowndes. I don't remember who wrote the letter marked Plaintiff's Exhibit #81 and which is dated April 11, 1887, but I read the letter and signed it, that's my signature. That's not my handwriting but that's my signature there. [378] Yes, that's my signature and Lowndes on the paper marked Plaintiff's Exhibit #82. I don't remember when we sold this to Woolfolk—that's my signature and that's Mr. Lowndes' and that's Woolfolk Walker's. Yes, sir; these documents were delivered about the dates that are on them. Yes, sir; I knew Dr. J. S. Pemberton intimately. Yes, sir; he was the first one that ever brought the "Coca-Cola" to me or that I ever heard of it.

"Q. 25. Could you remember the name 'Coca-Cola' when he first came to you or did you have to write it down?"

"A. I couldn't remember it and I had to write it down; he left a bottle with me and I had to write it down—the name of it."

"Q. 26. Mr. Venable, immediately after the signing of this paper which we denominate as Exhibit #78 and which is signed by Venable, Pemberton and Lowndes, and immediately after you obtained this bill of sale, which we denominate as Exhibit #79, did you take over this property and commence the manufacture of 'Coca-Cola'?"

"A. Yes, sir."

"Q. 27. Now, when you sold out—you and Mr. Lowndes sold out to Walker and Mr. Dozier,—you

(Deposition of Willis Erwin Venable.)
transferred the property to them, did you not?"

"A. Yes, sir."

(Defendant's object to the testimony quoted verbatim above because the questions are leading and suggestive. Objection overruled. Exception.)

Well, I manufactured some "Coca-Cola" up here where the factory was, at first, and then I moved the things down to the corner of Marietta and Peachtree Streets in the basement of Jacob's drug-store. I certainly have been selling "Coca-Cola" continuously since that time.

Cross-examination by Mr. LITTLETON.

At the time these papers were executed I was in the soda water business and ice-cream business. I had a basement about thirty by a hundred and then a part of the back basement about fifty feet square—that was the basement; upstairs, I had twenty-five feet, one side of Jacob's drug-store, for the fountain; that was the place I had below for manufacturing. Ever since that time I have been in the soda-water [379] and none other. I have been in the soda-water business since 1867. I couldn't tell you the number of drinks I sold at my fountain besides "Coca-Cola," but I never sold anything as an imitation of "Coca-Cola" nor anything except the genuine. Yes, sir; I sold root beer at that time, certainly, vanilla, lemon, strawberry, sarsaparilla, and probably fifty other different drinks that somebody got out—and limeade and all such stuff as that. Well, I can't remember whether I had been selling this root beer and sarsaparilla and such things long before I

(Deposition of Willis Erwin Venable.)

had heard of "Coca-Cola." I don't think I had ever sold any root beer before that, but I sold sarsaparilla. I don't remember whether sarsaparilla was at that time about the same color it is now. I suppose it was, that's all made about the same color I think, about, as well as I remember. Yes, sir; I handled ginger-ale at that time, too. Yes, sir; I dispensed these drinks at my soda-fountain, just as I have spoken of, and am doing so to-day, too.

I went down to 107 Marietta Street the first few days, the first few weeks, after we bought "Coca-Cola" until we had time to move it to the basement up there. No, it is not a fact that we never moved these things away, because we did move them away. I don't remember about Mr. A. B. Littleton and Mr. J. C. Mayfield calling on me about two or three weeks ago at my place of business and telling them that I never did move the stuff away from that place, but that I went down there to make it. I know we did move it away. I don't remember whether or not I made the statement to them that we did not move it away. The fact is, I never thought much about it when they were talking with me, I just simply had not refreshed my mind about what we did do with these things. I know we went there and made some for the first few days—the first ten days, may be—after we bought that formula. I said we moved these things up to the corner of Marietta and Whitehall. That was known as the Jacobs' drug-store. No, sir; I don't remember what we moved away from there. Why, I couldn't remember whether anything was

(Deposition of Willis Erwin Venable.)
left down there or not, I don't think there was anything left there that was used [380] in the making ing of "Coca-Cola." I don't remember all the different little items he did use in making "Coca-Cola,"—there wasn't very many. It didn't take *every* many when we first commenced making it. We sold out to Walker and Dozier because I found I didn't have money enough to run it, it would take more money than I had to put it on the market, that's the reason I sold it. No, sir, I don't remember the kind of packages—the containers,—this "Coca-Cola" was sent to me before I bought it. After I bought it I used some five gallon porcelain lined ice-cream freezers—I keep syrup in those to-day because I think it keeps better than tin or any other metal. Yes, sir; I certainly did sell this "Coca-Cola" syrup over the counter. Yes, sir; and collected the money for it, over the counter, and am doing that to-day. I couldn't say whether or not we shipped it to any dealers, I don't remember whether I did or not. No, I don't remember what Pemberton did after that, I don't remember anything about what became of him. After ten or fifteen days after this purchase by me I never had occasion to go back to 107 Marietta Street. The doctor would drop in to see me once in a while, but I didn't know what business he was in or anything about him. No, sir, at that time there wasn't anybody besides myself and my partners collecting the proceeds of "Coca-Cola" that I know of. No, sir, Asa G. Candler didn't take any "Coca-Cola" from us while we were making it, that I remember of, we

(Deposition of Willis Erwin Venable.)

didn't keep it but a short time. No, sir, I did not go back to 107 Marietta Street and make any "Coca-Cola" there. I can't tell you, sir, how much "Coca-Cola" altogether I did make and sell, not any more than I could tell you how much lemon syrup I made. No, sir; "Coca-Cola" wasn't known very well at that time. Yes, sir, it was just being introduced, just starting. I couldn't say how much we sold, but there wasn't a great deal of it sold; but I had confidence in it, and saw it was a good thing, but I didn't have the money to put it on the market, and Mr. Lowndes said he didn't have it, and didn't care to put up the money. After we bought it I actually made it myself. I bought my coca from Jacobs there,—maybe I got him to order it for me,—and the caffeine I got him to order that, also, from New York **[381]** in ten pound cans. I took the coca leaves and made my fluid extract of coca myself by percolation—made many a gallon besides what I made for the "Coca-Cola," before that and since—they used that in the drug business, and I have been in the drug business, in drug-stores and working in drug-stores in the soda-fountain and ice-cream business, all my life. I couldn't tell you, sir, whether Dr. Pemberton moved away from 107 Marietta Street or not. Well, I couldn't tell you the distance from my place of business at that time to 107 Marietta St. We were on the corner down here and it was up there right below Spring Street on Marietta Street. I don't know the distance, exactly, I knew where the two places are and traveled it more than a thousand times in my life.

(Deposition of Willis Erwin Venable.)

Yes, sir, the only thing I did with "Coca-Cola" I just sold it in my fountain—that's the only thing I remember doing with it, I don't remember selling it to anybody outside. The fact is, at that time there was very few of them knew anything about it. Mr. Lowndes didn't have anything to do with it,—I mean the manufacturing of it. I couldn't tell you what kind of containers I got this in before Lowndes and I bought. I don't know whether it was in a jug or what it was in—jug or keg—but I think it was in a jug, as well as I remember, but I don't remember exactly what it was in, I am not positive about that. It was a small matter with me, anything that he would send it in, if it was clean, would be all right with me, I didn't pay any attention to that, but I think it was in a jug, though. I don't know that Mayfield ever did make it. No, sir, Pemberton didn't make any more "Coca-Cola" after that. He didn't have anything to make it out of—to make it with, I am satisfied he didn't make it unless he could remember the formula, for he didn't have the formula. No, sir, I didn't think Pemberton had any means, much. I don't know exactly what he was worth. I don't know anything about that part of it. Yes, sir; the upshot of it was we could not furnish the money to finance this business and just sold out.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #78, #79, #80, #81 and #82.)

Deposition of Charles Howard Candler, for Plaintiff.

CHARLES HOWARD CANDLER.

Direct Examination by HAROLD HIRSCH, Esq.

[382]

I reside in Atlanta, Georgia, and my business is that of manufacturing "Coca-Cola." I am vice-president of the Coca-Cola Company. I have been with that company since the fall of 1898—the manufacturing department, largely, shipping clerk, and I went on the road for a little while and managed the New York office for a couple of years, and then, when I became vice-president, it was my principal province to take charge of the manufacturing of "Coca-Cola" syrup. Ever since I have been in charge of the manufacturing, so-called caramel coloring—burnt sugar—has been used to produce the color in "Coca-Cola." We use that solely to color it. Plaintiff's Exhibit #82 is "Coca-Cola" syrup without the coloring—everything else that goes in "Coca-Cola" except the coloring, yes, sir. This caramel has been used in "Coca-Cola" ever since I have known it. Yes, sir, I am in charge of the barrel factory down at the "Coca-Cola" plant and I oversee the making and the painting of the barrels. The color of these barrels is a particular red color which the Coca-Cola Company has been using ever since I can remember. They have never used any other color so far as I know. I have a memorandum in my pocket of the number of barrels and kegs that have been used in barreling and putting up "Coca-Cola" for the past eleven years, painted that color, namely: In 1903,

17,600 barrels; 6,150 ten gallon kegs; 5,300 five gallon kegs; and I put down in the column here the number of jugs so as to balance the account. The jugs were not painted. In 1904, 22,650 barrels; 8,000, ten's; 6,800 five's; in 1905, 31,000 barrels; 10,800 ten's; 9,300 five's; in 1906, 42,000 barrels; 14,700 ten's; 12,500, five's; in 1907, 50,000 barrels; 17,500 ten's; 15,000 five's; in 1909, 70,000 barrels; 24,400 ten's; 20,900, five's; in 1910, 83,800 barrels; 28,300 ten's; 25,140, five's; in 1911, 96,000 barrels; 33,700 ten's; 28,500 five's; in 1912, 110,000 barrels; 38,500 ten's; 32,000 five's; in 1913, 135,500 barrels; 47,300 ten's; 40,600 five's. These barrels and kegs have been shipped to various points in the United States, and some of them abroad—out of the United States. By "various points" I mean to bottling companies, soda-fountains, wholesalers, all over the United States, and some few of them in foreign [383] countries.

(It is stipulated and agreed between Counsel that the sum or value in controversy in this case is more than the sum of $3,000 exclusive of interest and costs.)

Cross-examination by Mr. LITTLETON.

The Coca-Cola Company first began to make bottling syrup in 1898, and that's when "Coca-Cola" first began to be bottled. I don't recall when the Coca-Cola Company quit making "Merchandise No. 5." No, I don't remember when they employed the Maywood Alkaloid Works to begin making it, or about when. I have not thought about it—whether it was

(Deposition of Charles Howard Candler.)

about 1905—since I studied that question some years ago, sir, and I don't remember at all. Yes, sir, I had charge of the manufacturing of "Coca-Cola" since 1898, and I made "Merchandise No. 5" before Schaeffer made it. "XQ. 10. What made you change and quit making 'Merchandise No. 5' yourself and begin getting the Schaeffer Alkaloid Works to make it?" "A. Because it was—the policy of the Coca-Cola Company was changed for some reason." (Mr. HIRSCH.—"It is understood that I am objecting to all this line of examination.") I had no information as to what the policy was that was changed, I was just told to discontinue making it. No, sir, I do not know why I was told to discontinue making it, I never questioned it, it was orders from higher up. I have been vice-president of the Coca-Cola Company since 1906, eight years. Yes, sir, I am a member of the Board of Directors but I was not in 1906. I will be 36 years old in December, and I am a son of Mr. Asa G. Candler. I don't recollect that I was making "Merchandise No. 5" when I was first elected vice-president in 1906. I don't remember, that was entirely different, the fact of being elected vice-president had no connection with the manufacturing of "Coca-Cola" at all.

Since I have been connected with the "Coca-Cola" Company they have never advertised or sold this "Coca-Cola" under any other name. Yes, sir; as far as I know it has always been known and sold under the name of "Coca-Cola." If the Coca-Cola Company had sold it under any other name during

the time I have been connected with the company I [384] would have known it. No, sir, the Coca-Cola Company has never sold it under the name of "koke" or "dope." No, sir, I am not a chemist. I don't know whether or not it's a fact that "Coca-Cola" syrup contains a trace of cocaine in it. I never did analyze "Coca-Cola" syrup or "Merchandise No. 5," nor have I ever seen it analyzed.

Yes, sir; I know the firm of Hagan & Dodd. I know there is a firm by that name here, but I do not know the soft drinks they are making. Yes, sir; they have made a drink called "Ko-Nut." I do not know whether or not they are making a drink called "Afri-Cola." I haven't seen much of the "Ko-Nut" for three or four years, I don't think. Yes, sir; I live here in Atlanta—have lived here all the time. No, sir; I never have seen the wagons of Hogan & Dodd, distributing their kegs to customers and I never drank any "Ko-Nut" that I know of, nor have I ever seen any of it that I know of. No, I don't know how many soft drinks there are on the market to-day that are about the same color as "Coca-Cola"—that same general line of color—caffeine or cola drinks, I never thought of it. Of my own knowledge I don't know of any. I have just heard there are certain soft drinks that contain caffeine, so-called "cola" drinks. Well, I have never seen any bottled product of that sort, in bottles, to recognize it. No, sir, the Coca-Cola Company has not as long as I have been in it, ever advertised or labeled any of its containers, or any con-

(Deposition of Charles Howard Candler.)

tainers containing "Coca-Cola" syrup, with the name "Koke" or "Dope." I rather think the man who began to bottle "Coca-Cola" was Whitehead. My impression is that it was in 1898. Yes, sir, we buy second-hand barrels and kegs and put up "Coca-Cola" in them. We buy barrels from second-hand barrel dealers, cooperage people.

Redirect Examination by Mr. HIRSCH.

Well, these second-hand barrels, after they come into our place, are inspected and cleaned out and fixed up ready for our stock, and then, when they are about to be used, they are painted this particular red color, and when they are dry they are sterilized and "Coca-Cola" put in them. (Plaintiff here tendered and offered in evidence Plaintiff's [384½] Exhibit No. 83.)

Deposition of David Emory Bolton, for Plaintiff.

DAVID EMORY BOLTON.

Direct Examination by Mr. HIRSCH.

I reside in Atlanta, Ga., and am a special representative for the Coca-Cola Co. The nature of my work, as such special representative, has been to make different towns throughout different states and get the opinions of the dealers as to what they understand the words "dope" and "coke" to mean when applied to a soda-fountain beverage; also, to make observations at the different fountains as to what spigot or container in the fountain the syrup is drawn from to make the drinks which are served in response to orders for "Coca-Cola," "coke," and

"dope,"—whether drawn from the same spigot, or different spigots,—and to observe the labels on the spigots and the advertising, if any, in and about the stores and towns.

I have visited forty-seven towns in all,—would you like me to name them? I will have to refer to my list. This is my original list made at the time by me. I called on Augusta, Ga., and the following towns in South Carolina: Aiken, Blackville, Barnwell, Allendale, Bamburg, Branchville, Orangeville, St. Matthews, Columbia, Newberry, Clinton, Laurens, Encree, Greenwood, Abbeville, Bolton, Petzer, Anderson, Seneca, Westminster, Easley, Greenville, Spartanburg, Gaffney and Blacksburg. I also called in the following towns in North Carolina: Charlotte, Winston-Salem, Greensboro, Raleigh, Wilmington, Ashville, Reidsville and Salsbury. In Virginia I called on the following towns: Danville, Norfolk, Petersburg, Richmond, Alexandria, Lynchburg, Charlottsville and Front Royal. I also called on Petersburg, W. Va.

The table filed as Plaintiff's Exhibit 93 indicates the places where I called for "Coca-Cola," "coke," and "dope," on separate occasions, and observed customers using those words. At each of these places I would go in and call for "Coca-Cola" and observe the spigot from which the syrup to make the drink was drawn. [385] Later in the day I would again visit the same place and ask for a "coke" and observe the spigot from which the syrup to make the drink was drawn. Still later I would again visit the same store and ask for a "dope" and again observe

(Deposition of David Emory Bolton.)

the spigot from which the syrup was drawn to make this drink. I would also observe the customers coming in and asking for "Coca-Cola," "coke" and "dope" and I would observe the spigot from which the syrup was drawn to make all these drinks. In every instance the syrup to make all the drinks served in response to calls for "Coca-Cola," "coke" and "dope" was drawn from one and the same container, except at Howard's store in Augusta, Georgia, where the fountain had two or more water containers and two or more dispensers. After making these observations, I would then interview the proprietor or dispenser, inform him of the result of my observations as above outlined, and then ask what he understood the words "koke" and "dope" to mean. In each instance the proprietor or dispenser, as the case may be, stated that "coke" or "dope" were understood to mean "Coca-Cola."

(The testimony as to the statements of the dealers to the witness with reference to their understanding of the meaning of the words "coke" and "dope" is objected to because hearsay evidence and mere gossip. Objection overruled. Exception.)

A number of the proprietors stated that they only handled "Coca-Cola" and that, therefore, that was what they gave their customers when they asked for "coke" or "dope." The (*) in front of the name of the store in the following tabulation indicates that the container from which the syrup was drawn to make the drink served in response to orders for "Coca-Cola," "coke" and "dope" was labelled with the name "Coca-Cola." The following is the tabulation referred to: **[386]**

Town.	Store.	Prop. or Dispenser.
Augusta, Ga.	Howard Drug Store No. 1	Mr. Howard, Prop. Earl Cummings, Dis.
Augusta	*Howard Drug Store No. 2	Mr. Howard
Augusta	T. A. Cardell	Mr. Cardell Nathaniel Fairbrother, disp.
Augusta	Watson Drug Co.	Jacob Watson F. G. Allen, disp.
Augusta	The Model Gro. Store	Mr. Holmes, Prop.
Augusta	H. J. Morkwater	Mr. Morkwater
Aiken, S. C.	Hall's Pharmacy	Mr. Henderson, Mgr.
Aiken	Sanders' Pharmacy	Mr. Sanders, Prop.
Aiken	Mr. Overstreet	Mr. Overstreet, Prop.
Blackville	Hotel Pharmacy	Mr. Wesenger, Mgr., or Prop.
Blackville	E. D. F. Pharmacy	Mr. Epps, Mgr.
Barnwell	Deason Drug Co.	O. A. Best, disp.
Barnwell	F. H. Huggins Drug Store	O.
Allendale	Scarson's Drug Store	R. B. Scarson, Prop.
Denmark	Denmark Drug Co.	Mr. Willis, Mgr.
Bamberg	Mack's Drug	Mr. McCracken, Mgr.
Bamberg	People's Drug Co.	Mr. J. T. Kelley, Mgr.
Branchville	Steedly's Soda Fountain	W. D. Steedly, Prop., and Disp.
Orangeburg	Lowman Drug Co.	W. A. Cherry, Mgr.
Orangeburg	Doyle Drug Co.	M. S. Williams, Mgr.
St. Mathews	Fair's Pharmacy	W. W. Fair, Mgr.
Columbia	Hudgins Drug Co.	Manager or Prop.
Columbia	Brim & Little Drug Co.	Manager or Prop.
Columbia	Mirt Drug Co.	Manager or Prop.
Columbia	Pinkussohn Cigar Co.	Manager or Prop.
Columbia	Taylor Drug Co.	Manager or Prop.
Columbia	Heywood's Pharmacy	Manager or Prop.
Newberry	Newberry Drug Co.	W. O. Mills, Mgr.
Newberry	Gilder & Weaks Drug Co.	C. D. Weaks, Mgr.
Clinton	Clinton Pharmacy	W. C. Harper, Mgr.
Clinton	Young's Pharmacy	J. H. Young, Prop.
Laurens	Ray's Pharmacy	C. K. Ray, Mgr.
Laurens	Ramsey's Pharmacy	B. F. Ramsey, Prop.
Enoree	Enoree Drug Co.	M. S. Dantzler, Mgr.
Greenwood	Oregon Drug Co.	E. L. Morris, Mgr.
Greenwood	Greenwood Candy Kitchen	Geo. Alexas, Mgr.
Abbeville	Mulford Drug Co.	C. A. Mulford, Mgr.

Town.	Store.	Prop. or Dispenser.
Abbeville	Abbeville Candy Kitchen	Steve Parthenos, Mgr. and Prop.
Belton	Donald Wilson Drug Store	G. S. Cuthbert, Mgr.
Pelzer	Griffin Drug Co.	W. W. Griffin, Mgr.
Anderson	Red Cross Drug Store	L. W. Seals, Mgr.
Anderson	Evans Pharmacy	W. N. Webb, Mgr.
Seneca	Seneca Pharmacy	T. L. Stribling, Mgr. and Prop.
Westminster	Stonecypher	J. H. Stonecypher, Mgr.
Easley	R. F. Smith Drug Co.	Wm. Wyatt, Mgr.
Greenville	Armstrong Drug Co.	J. C. Armstrong, Mgr.
Greenville, S. C.	Doster-Bruce Drug Co.	O. L. Doster, Mgr.
Greenville	Candyland Ice Cream Parlor	E. S. Bellinger, Mgr.
Greenville	Sloan Drug Co.	Thomas Sloan, Prop.
Spartanburg	K. W. N. Pharmacy	Thomas H. Lever, Manager
Spartanburg	Green Drug Co.	J. E. Green, Mgr.
Spartanburg	Acropolis Ice Cream Parlor	Steve Backades, Mgr.
Spartanburg	Elite Ice Cream Parlor	J. A. Metropolis, Mgr.
Gaffney	Cherokee Drug Co.	J. N. Littlejohn, Mgr.
Gaffney	Gaffney Drug Co.	J. C. Greech, Mgr.
Blacksburg	Cousins Drug Co.	W. G. Cousins, Mgr.
Blacksburg	Iron City Drug Co.	T. S. R. Ward, Prop.
Charlotte, N. C.	Jordan's Drug Store	
Charlotte	Moody Drug Co.	E. J. Caton, Mgr.
Charlotte	Jas. P. Stowe Drug Co.	Jas. P. Stowe, Mgr.
Charlotte	Charlotte Drug Co.	Mr. McLarkin—Mr. Bullock, Prop.
Winston—Salem	O. Hanlon's Drug Store	E. W. O. Hanlon, Prop.
Winston—Salem	Thompson Drug Store	P. A. Thompson, Prop.
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Winston—Salem	Owens Drug Co.	P. J. Brain, Mgr.
Winston—Salem	Hutchins Drug Co.	R. L. Hutchins, Mgr.
Greensboro	Grissom Drug Co.	E. G. Bowers, Mgr.
Greensboro	Sykes Drug Co.	E. C. Sykes, Mgr.
Greensboro	Greensboro Drug Co.	Wm. Johnson, Mgr.
Greensboro	Conyers & Sykes Drug Co.	R. J. Sykes, Mgr.
Danville, Va.	E. M. Wallace Drug Co.	E. M. Wallace, Prop.
Danville	Danville Drug Co.	Harry W. Thomas, Mgr.
Danville	Jacobs Drug Co.	J. D. Pruitt, Prop.
Raleigh, N. C.	Thomas & Son Drug Co.	Wm. G. Thomas
Raleigh	Tucker Bldg. Pharmacy	Gilbert Crabtree, Mgr.
Raleigh	Brantley Drug Co.	J. C. Brantley, Prop.
Raleigh	Wake Drug Co.	J. T. Moore, Mgr.

Town.	Store.	Prop. or Dispenser.
Wilmington	Orton Confectionery Co.	E. Dinos, Prop.
Wilmington	Hicks-Bunting Drug Co.	
Wilmington	Woodall-Sheppard Drug Co.	H. M. Cox, Mgr.
Wilmington	Elvington Pharmacy	D. A. Elvington, Owner
Norfolk, Va.	Martin's Pharmacy	
Norfolk,	Cummings Confectionery Store	Louis Cummings, Mgr.
Norfolk,	Burrow-Martin Drug Co.	J. T. Powell, Mgr.
Norfolk,	Truitt's Pharmacy	C. F. Truitt, Prop.
Petersburg	Morrison Drug Co.	J. A. Morrison, Prop.
Petersburg	Harrison Drug Co.	J. B. Harrison, Prop.
Petersburg	Palms Confectionery Co.	W. G. Roberts, Mgr.
Richmond	Muller Drug Co.	T. A. Muller
Richmond	Blair's Drug Store	
Richmond	Crenshaw Cigar Co.	W. D. Crenshaw
Richmond	McKay Cigar Co.	T. R. Ennos, Mgr.
Richmond	Grant Drug Co.	W. S. Cavedo, Mgr.
Alexandria	Warfield Drug Co.	Edgar Warfield, Jr., Prop.
Alexandria	Gubson Drug Co.	Richard Gubson
Lynchburg	Boston Confectionery	Lewis Vaynes, Prop.
Lynchburg	Craghill Jones Drug Co.	J. P. Jones, Mgr.
Lynchburg	Lambert's Pharmacy	E. D. Williams, Mgr.
Asheville, N. C.	Globe Cafe & Candy Kitchen	H. C. Theobald, Mgr.
Asheville	Raysor Drug Co.	C. A. Raysor
Asheville	Carmichael Pharmacy	R. C. Hawkins, Mgr.
Asheville	Smith's Drug Co.	Frank Smith, Mgr.
Charlottesville, Va.	Pence & Sterling Drug Co.	R. S. J. Sterling, Mgr.
Charlottesville	Fitzhugh Bros. Drug Co.	J. S. Fitzhugh, Mgr.
Charlottesville	Robert E. Clark Drug Store	Robert Clark, Prop.
Front Royal	Trout & Turner Drug Co.	M. B. Turner, Mgr.
Front Royal	Venable's Drug Store	C. M. Venable, Prop.
Petersburg, W. Va.	Wise Grocery Store	W. C. Wise, Prop.
Petersburg	Judy & Mooman Drug Co.	G. Mooman, Mgr.
Reidsville, N. C.	Tucker Drug Co.	R. H. Tucker, Prop.
Reidsville	Gardner Drug Co.	T. L. Gardner, Prop.
Salisbury	Main Pharmacy	Stamy Carter, Mgr.
Salisbury	Peoples Drug Co.	J. R. Trotter, Mgr.
Salisbury	Smith Drug Co.	Sam Carter, Mgr.

(Deposition of David Emory Bolton.)

I also made what we call consumers' tests in a number of places. A consumers' test is made in this way: I would go to a store and station myself in the vicinity of the fountain for a specified time and make a note of the number of customers who called for "Coca-Cola," "coke" and "dope" during that time. I would get the dispenser to ask each customer who called for "coke" or "dope" if he meant or wanted "Coca-Cola," and then I would observe the replies of the customers. At the fountains at the following places consumers' tests were made and every person asking for "coke" or "dope" in ordering drinks was asked by the dispenser, in my presence, if he wanted "Coca-Cola" and in each instance the answer was in the affirmative. The first column indicates the name of the town; the second, the name of the fountain; the third the name of the dispenser; the fourth the number of calls for "Coca-Cola" observed; the fifth the number of calls for "dope" observed and the sixth the number of calls for "coke" observed:

Town.	Store.	Prop. or Dispenser.	CC.
Blacksville, S. C.	Hotel Pharmacy	T. D. Box, disp.	8
Barnwell	Deason Drug Store	O. A. Best, disp.	
Allendale	Searson's Drug Store	F. H. Farmer, disp.	
Denmark	Denmark Drug Co.	Willis, Mgr.	
Bamberg	Macks Drug Store	Luke Curry, disp.	
Orangeburg	Lowman Drug Co.	Ed. Langley	
St. Mathews	Fair's Phar.	Dixon Whitestone, disp.	
Columbia	Huggins Drug Store	H. G. Sistrunk, disp.	
Columbia	Taylor Drug Co.	J. C. Bruce, disp.	
Newberry	Newberry Drug Co.	Dispenser	
Clinton		Gus Mayson	
Laurens	Ray's Pharmacy	Dispenser	
Greenwood	Greenwood Candy Kitchen	Mr. Alexas, Prop. and disp.	
Abbeville	Abbeville Candy Kitchen	Steve Parthenos, Prop. and Mgr.	
Belton	Donald Wilson Drug Co.	Lewis Cox, disp.	
Anderson	Evans Pharmacy	Will Adams	
Greenville	Armstrong Drug Co.	J. A. Rebow, disp.	
Greenville	Candyland Ice Cream Parlor	Steve Gorgon, disp.	
Spartanburg	Acropolis Ice Cream Parlor	E. C. Morrow, disp.	
Gaffney	Cherokee Drug Co.	Dispenser	
Blacksburg	Iron City Drug Co.	Geo. Roberts, disp.	
Charlotte, N. C.	Charlotte Drug Co.	J. T. Neighbors, disp.	
Winston—Salem	Owens Drug Co.	L. L. Nunn, disp.	
Greensboro, N. C.	Conyers & Sykes Drug Co.	K. C. Clendein, disp.	
Raleigh	J. C. Brantley Drug Co.	P. D. Gattis, disp.	
Danville, Va.	Jacobs Drug Co.	Loyd Bray, disp.	
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Wilmington, N.C.	Elvington Pharmacy	W. B. Wilson	
Norfolk, Va.	Cummings Confectionery Co.	Chas. Taylor, disp.	
Petersburg	Palm Confectionery Store	W. J. Adams, disp.	
Richmond	Grant Drug Co.	E. M. Farris, disp.	
Alexandria	Gubson Drug Co.	W. L. Arnold, disp.	
Lynchburg	Craghill-Jones	E. E. McDaniel, disp.	
Asheville, N. C.	Carmichael Pharmacy	J. C. Brown, Jr., disp.	
Charlottesville, Va.	Pence & Sterling Drug Co.	W. R. Munday, disp.	
Front Royal	Trout & Turner Drug Co.	L. J. Fristo, disp.	
Reidsville, N. C.	Tucker Drug Co.	J. W. Burris, disp.	
Salisbury	Main Pharmacy	L. D. Joyner, disp.	

(Deposition of David Emory Bolton.)

I observed "Coca-Cola" advertising in all the towns I visited and in most of the stores. I did not notice any drink at any of the towns visited, or at any of the stores, advertised under the name of "Dope" or "Koke," except at one place in Bamburg, South Carolina, I saw a card which is filed as Plaintiff's Exhibit #84, and at Seneca, South Carolina the Seneca Bottling Works is bottling a drink named "Dope" and the caps on these particular bottles is the only advertising that I saw of "Dope."

From the observation and consumers' tests I have made as above described, and from my personally asking dealers the meaning of the words "coke" and "dope," I would say that these words "coke" and "dope" are applied to "Coca-Cola." From my interviews with proprietors, dispensers and managers I would say that the meaning of the words "coke" and "dope" is "Coca-Cola" and that that is what they are applied to. "Dope" and "coke" mean, when they are asked for at soda-fountains, "Coca-Cola."

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #84.)

Cross-examination by Mr. LITTLETON.

I entered the employ of the Coca-Cola Company April 11, 1914. Before that I was connected with the Pinkerton National Detective Agency. No, sir, I am not necessarily a detective. I am not a detective. I was employed by the Pinkerton National Detective Agency as an operative. I don't know, sir, what the word "operative" means in the detec-

(Deposition of David Emory Bolton.)

tive language. I don't know whether it means a detective or not. I was with the Pinkerton National Detective Agency three years. [390] I can't say, sir, whether the detectives of the Pinkerton National Detective Agency are called "operatives" or not, I can't answer that. Yes, sir, they refer to their men that get up information and go out and attend to things as "operatives." Why, yes, they are detectives—investigators and operatives. No, sir, they do not have detectives aside from operatives—there is no distinction between a detective and an operative. In reply to your question as to whether the word "operative" means about the same thing as a detective, I will say that I think you can put different constructions on the word. I am employed by the Coca-Cola Company as special representative to represent them in a special way. I was employed for the purpose of getting up this special work I have testified to—for the purpose of getting up this evidence. My instructions with reference to getting up this evidence were nothing more than what I have outlined in my evidence.

Redirect Examination by Mr. HIRSCH.

"RDQ. 1. Mr. Bolton, you are employed by the Coca-Cola Company to make any investigations that you might be directed, are you not? A. Yes, sir."

(Objected to by defendants as leading—putting the words in the witness' mouth. Overruled. Exception.)

Yes, sir, I received a stated salary. No, sir, I do

(Deposition of David Emory Bolton.)

not get any reward outside of my stated salary for any investigations I might make.

Recross-Examination by Mr. LITTLETON.

It has been my duty since being with the Coca-Cola Company to carry out this character of work that I have testified to. No, sir, I have not made any investigations in any other cases besides this one, and I have not looked up any special work in regard to substitutions that didn't refer to this case.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #93, being a tabulation of the calls stated therein, which it was agreed might be attached to the deposition.)

Deposition of Dr. Joseph Jacobs, for Plaintiff.

DR. JOSEPH JACOBS.

Direct Examination by Mr. HIRSCH. **[391]**

I reside at 713 Peachtree Street, Atlanta, Ga. I have been living in Atlanta for thirty-six years. I have known the product "Coca-Cola" nearly ever since I have been here. It is made by the "Coca-Cola" Company, Atlanta. The paper presented to me and marked Plaintiff's Exhibit #76 bears my signature. Yes, sir; that paper was delivered about the date my signature is on there. Yes, I was a member of the firm of Walker, Candler & Company.

Cross-examination by Mr. LITTLETON.

I was a member of that firm a very short time, I think it was formed just probably a year, probably less, from the time we sold out to Mr. Candler. Yes, I am a chemist. "Coca-Cola" was made by one of

(Deposition of Dr. Joseph Jacobs.)

the soda-water men, not under my supervision, but I knew of the formula and what entered into it. Yes, sir; I knew the formula and what entered into it. No, we did not make the extract; in those days it wasn't made out of the *tract*. I don't know whether or not I should answer your question as to whether in those days it was made of coca leaves, or the extract of coca leaves and kola-nuts. Well, it was made from coca leaves then. No, they did not change it while I was connected with the company. At that time "Coca-Cola" had in it only such cocaine as would be contained in the coca leaves. Besides cocaine, coca leaves have in them extractive matter, —cocaine is the only thing of any importance. At that time "Coca-Cola" had just such cocaine in it as came from the coca leaves. I don't know whether it has since been changed or not; it wasn't changed during my connection with it.

Redirect Examination by Mr. HIRSCH.

My connection with "Coca-Cola" ceased, unfortunately, with the transfer of that paper, yes. No, I didn't actually manufacture "Coca-Cola," it was made by Venable.

Deposition of St. Elmo Murray Massengale, for Plaintiff.

ST. ELMO MURRAY MASSENGALE.

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Georgia, and have lived here since 1880. I am in the advertising business with the Massengale Advertising Agency, which concern

(Deposition of St. Elmo Murray Massengale.)

I have conducted for the past nineteen years. I travel about two-thirds of my time, covering the entire United States. I am familiar with the advertising of soft drinks. "Coca-Cola" is **[392]** advertised everywhere and universally in all forms; namely, in newspapers, magazines, street cars, on bill boards, by glass signs, novelties, etc. I have seen it everywhere. The feature displayed in "Coca-Cola" advertising is the trademark. By the trademark I mean that (indicating one of the Exhibits containing the name "Coca-Cola" in script) it's the peculiar formation of the words "Coca" and "Cola," and the name itself, "Coca-Cola." In my experience around the country for nineteen years in the advertising business I have never seen a drink or any substance or beverage advertised under the name of "Dope" or "Koke." Outside the city of Atlanta, I have never seen any drink or beverage advertised under the name of either "Ko-Nut" or "Afri-Cola."

Cross-examination by Mr. LITTLETON.

No, sir; I have never seen "Koke" advertised. I have traveled in Missouri, Texas, Tennessee, Louisiana, Arkansas, South Carolina, Mississippi, Florida, Georgia and Alabama. I have never seen "Koke" advertised either on fans, umbrellas, cards, match boxes or in newspapers or in any form at all. I have seen "Coke's Dandruff Cure" but I have never seen any "Koke." Yes, sir, the dandruff cure is spelled "C-O-K-E"—isn't that the way you spell "Koke?" I have never seen any advertising of a

(Deposition of St. Elmo Murray Massengale.)

soft drink with the word "Koke" on it. Yes, sir, I frequent soft drink dispensatories, I take a drink at the soda-fountains. Well, I do not charge my mind with the advertisements I see there, particularly, but I think I would have seen it if it had been advertised. This particular factory of the Coca-Cola Company here in Atlanta is not the biggest manufacturing enterprise in Atlanta, but the Coca-Cola Company itself is, of course. Not only does the advertising of a home product made by a home company attract my attention when I am away from home, but I particularly notice anything that imitates or attempts to take anything from "Coca-Cola" because I have advertised "Coca-Cola" myself for something like fifteen years. I have been doing advertising work for the Coca-Cola Company for about fifteen years; yes, sir. **[393]** I have seen the advertisements of Hires Root Beer, but I don't recollect the advertisement of any other kind of root beer. I never have seen the advertising of "Ala-Cola," nor of "Tru-Cola"—I have seen the name "Rye-Ola," away from home. Yes, sir, I think I have seen "Wise-Ola" in Kansas City—I am not sure just where. I have seen "Chero-Cola" advertising recently, yes, sir. I don't recall the "Celery-Cola" advertisements. "My-Cola" is a new one on me. "Lemon-Cola"—seems to me like I saw that in Norfolk. Never heard of "Mint-Cola" or of "Ameri-Cola." I never heard of "Cola" except in connection with some other front name. I have never heard of "Cook-Ola." My business does not consist in advertising exclusively

(Deposition of St. Elmo Murray Massengale.)

for the Coca-Cola Company, I have nearly four hundred customers. For fifteen years I have done work for the Coca-Cola Company and in my travels through the several states in my line of business I haven't seen advertisements for these other drinks except as specified in my testimony above—I might have seen them, but if I did they passed *out without* my remembering them. If they did advertise any it isn't now in my mind at all. I was in Atlanta about seven or eight years ago, but I don't recollect any advertising at that time of any soft drink advertised as "Dope." Let me say just this, there was somebody—and it might have been "Dope"—that opened a factory right opposite the "Coca-Cola plant. It was an imitation of "Coca-Cola," but I don't recollect the name of it. I don't recollect any particular time, either. I wouldn't be able to state the year or anything of that sort, but I know they have been doing it quite a while. The Exhibit marked defendant's exhibit #85 is what we call a metal sign—it isn't metal either, it has the appearance of metal, but it is probably manufactured of paste board—an advertising sign. It has on it the words "Drink Coca-Cola" in gilt on a solid black background. That's one of the Coca-Cola Company's regular forms of advertising. I don't know how long they have been using that because we don't handle that particular line. The exhibit marked defendant's exhibit #86 seems to be a glass sign. It has on it the words "Drink Coca-Cola" and "Pay Cashier." **[394]** That's also gilt on a black background. The

(Deposition of St. Elmo Murray Massengale.)

gilt of this sign differs from that of Exhibit #85 in that one has a frosted appearance and the other is smooth.

Redirect Examination by Mr. HIRSCH.

I thought at first that Plaintiff's Exhibit #85 was a metal sign, but it is made of paste board and looks like a metal sign. Plaintiff's Exhibit #87 is the same kind of a sign, but there is no gilt about it.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #87, and the defendants tendered and offered in evidence the Exhibits marked Defendant's Exhibits #85 and #86.)

Deposition of William P. Heath, for Plaintiff.

WILLIAM P. HEATH.

Direct Examination by Mr. HIRSCH.

I reside in Atlanta, Ga., and have lived here for 25 years or more. I am a chemist connected with the N. P. Pratt Laboratory. I have been engaged in the profession or practice of chemistry for nearly 29 years. I received my scientific education at the Georgia School of Technology. I have had experience in all kinds of miscellaneous analyses during the last 20 years. For the last 3 years I have made a specialty of making analyses of soft drinks. I have known the product "Coca-Cola" for about 20 years. The Coca-Cola Company makes "Coca-Cola." Yes, sir, I have had some experience in making analytical examinations of "Coca-Cola." I have made examinations as to the caffeine content, specific gravity and acids and coloring matter. Oh, I expect I have made several hundred examinations

(Deposition of William P. Heath.)

of "Coca-Cola" along those lines. The coloring matter I speak of is caramel—really burnt sugar. Yes, sir; that coloring is used in "Coca-Cola" to give it it's characteristic color. No, sir; it does not serve any other purpose in "Coca-Cola" except to give it its color.

Cross-examination by Mr. LITTLETON.

No, sir; I am not employed by the Coca-Cola Company. Of course, we do some work for them, but it is on a fee proposition, we have an independent chemical laboratory. We have been doing a good deal of special work for the Coca-Cola Company for three years. Caramel has a taste by itself,—it has a taste,—but that taste is practically destroyed when it is put in the "Coca-Cola" syrup. [395] The amount used is very small, a fraction of one per cent, I think—less than a half of a per cent. I question whether you could taste the difference with or without it. I have tried it with and without the caramel, but I couldn't notice any difference. The formula for "Coca-Cola" has not been changed since I have been analyzing it. I have analyzed the coca and cola extracts used in the preparation for "Coca-Cola" syrup for its alchoholic contents. I only know from hearsay whether or not it has fluid extract of coca leaves in it. My understanding is that it has coca leaves extract in it. I understand that this extract is made by a process in which the cocaine has been removed. I am testifying now from hearsay. If the cocaine is removed from the coca leaves there is left the extract of coca leaves—only the alkaloids are

(Deposition of William P. Heath.)

taken out. What is left is the extract of the leaves and the tannin; whatever soluble matter comes out of the leaves is left in there, the coloring matter and everything that this extract takes out—only the alkaloids are removed. The coloring matter is a distinct light brown color. Caffeine is in the cola-nuts. I don't think there are any other alkaloids in the coca leaves except the cocaine and what we call cocaine derivatives—similar bodies to cocaine. I don't know what else there is in the coca leaves of any physiological or chemical properties aside from the alkaloids. I don't know whether there is anything left in the coca leaves of any physiological or chemical properties after the alkaloids are taken out. I said I had analyzed "Coca-Cola" syrup two or three hundred times—partial analyses, not everything in it. I analyzed for the specific gravity the phosphoric acid, sugar and caffeine. I found about .19 per cent of caffeine in the syrup. That analysis was made within the last year. I don't know how much caffeine 125 pounds of cola nuts would yield. I don't know what percentage of caffeine is in the cola nut nor do I know what percentage of cocaine is in the coca leaves except that it is very small.

Redirect Examination by Mr. HIRSCH. [396]

There are seven certified coal-tar colors allowed by the Pure Food Laws to be used in coloring soft drinks which are no more expensive than caramel. I have examined "Coca-Cola" as served at fountains, for alcohol, but I have never found any alcohol served at fountains with a glass of "Coca-Cola."

(Deposition of William P. Heath.)

There is less than a half per cent. Anything less than a half per cent is considered non-alchoholic.

Recross-examination by Mr. LITTLETON.

I don't remember the names of the seven other colors I refer to but there are three shades of red, and orange, yellow, blue and green. They are coal-tar colors. They are known on the market as certified coal-tar colors. Yes, sir, they have a name, I think they are all known by their numbers. These colors have been in use for a long time, but they have only been allowed since the Pure Food Law went into effect; the others have been disbarred. They have been in use for a long time, years and years, a good many of the coal-tar colors, but the use of all of them is prohibited by the Pure Food Laws except these seven. Caramel coloring has been in use a long time. It has been in universal use for coloring all kinds of beverages, not only soda water drinks, but whiskeys, wines and beer and flavoring extracts, as long as I can remember. I suppose it is the most universally used coloring among the food products. The fact of the business is, it is absolutely harmless as a coloring matter and has no coal tar in it at all.

Deposition of Asa G. Candler, for Plaintiff (Recalled).

ASA G. CANDLER (Recalled).

Cross-examination (Resumed) by Mr. LITTLETON.

Yes, sir; I was on the stand yesterday. Yes, a long time after I bought "Coca-Cola," I manu-

(Deposition of Asa G. Candler.)

factured the extract of coca from the coca leaves. I don't do that now; no, sir. I don't remember when we changed. No, I don't remember about how many years ago it was. After we changed, we got our coca leaves from where we are getting them now. "XQ. 8. What is the name?—Shaeffer Alkaloid Works?" "A. That's what you say." "XQ. 9. Isn't that it?" "A. You don't need that information,—sure."

I don't remember how long I manufactured this extract after I bought "Coca-Cola,"—is isn't necessary, I don't think for me to remember. I have'nt tried to remember. I don't try to remember it at all. [397] It is at least as much as five years. I don't know, sir, whether it is ten or not, I don't recollect. You ask if we didn't make this change about 1906; now what do you think of that, Mr. Hirsch? These folks here are trying to extort from me all they can get for the interest of their client. I know some things—I don't remember the dates. (Mr. HIRSCH. "You can tell what contract was entered into if you remember it.") Let me see now—you want these gentlemen to know that? I don't want to give them any more than I am obliged to, I know who I am fooling with. Probably nine years ago, that will make it back to about 1906, wouldn't it? I think probably about 1906,—oh, it was further back than that,—the Spanish war was in 1898—it must have been some ere about 1900. That's what I fix it by; I am trying to fix it by other things. I know where I was at the close of the war and know why I was there;

(Deposition of Asa G. Candler.)

it must h[illegible]een made in 1899.

"XQ. 16. The same amount of cocaine in the extract, after you made that change, as there before?" "A. Wha[illegible] sort of question is that?—never was any cocaine in it."

(Objection by plaintiff as improper cross-examination and incompetent.)

"XQ. 17. You say there never was any cocaine in it? A. Never was. XQ. 18. From the beginning? A. From my beginning."

[illegible], sir, I was not associated with Dr. Jacobs; I was associated with Walker, Candler & Company. They never made any "Coca-Cola," as far I know—Walker, Jacobs & Company, or whatever it is, as far as I know. Yes, sir; we began making it in 1888, we were making it since 1888. No, Dr. Jacobs wasn't associated with me in the manufacture at all, that's my recollection, isn't that the history, Mr. Hirsch? (Mr. HIRSCH.—"He testified he didn't. Did he testify that? Why of course he didn't, that's my recollection. "Coca-Cola" was made while Walker, Candler & Company were in existence. Dr. Jacobs was a member of that firm, but I don't think he ever made any "Coca-Cola"—there never was any occasion for him doing it, he was running a retail drug store and I was running a wholesale. [398] Why, certainly he would know better about that than anybody else, if he made it, I expect he would.

The reason why I quit making this extract myself and employed Dr. Schaffer to make it, is because I

thought it was to my interest to do it. You ask how was it to my interest; I don't think I need answer that; what about it Mr. Hirsch? (Objection by plaintiff as incompetent, irrelevant and immaterial.) Because with his facilities and the apparatus he had, he could manufacture it for me cheaper than I could. I don't know that he would manufacture it better than I could—I am not going to say so to you. If I testified yesterday that the manner in which I made my extract of coca leaves was not the same as Parke, Davis & Company's method I was testifying to something I didn't know about except by the books; it was like your question about the coca leaves—I could have referred to the U. S. Dispensatory and told you gentlemen "cocaine"—I wasn't much disposed to gratify you gentlemen by saying "cocaine." No, I won't explain the method by which I got this extract from the coca leaves, unless I am obliged to. (Objection by plaintiff and the witness advised by plaintiff's counsel to decline to answer the question, on the ground that it is a trade secret.) I am not here to tell you things that you can get for the benefit of your client.

The testimony of Charles Howard Candler—who is my son, of whom I am very proud,—in the Government libel suit at Chattanooga, against "Coca-Cola," which testimony is set out below, states substantially the process by which he made the extract from the coca leaves for the Coca-Cola Company prior to the time we employed the Schaffer Alkaloid Works to make it. The testimony referred to is

(Deposition of Asa G. Candler.)

as follows: "We would buy the whole leaf in bales and grind it in a mill; we would also buy cola nuts in begs and mix them—I have forgotten the proportion—it has been so long—in a percolator, first mix up in what we called a wooden bog—wetted it down, together with a certain quantity,—just a crude box for packing—and added a certain quantity of phosphate of lime, and after they were thoroughly wetted, packed them in a percolator, [399] so called *magma* (?) and let them stand possibly twenty-four hours, and then we put on them diluted alcohol, to which the white or a California wine had been added, in same proportion, the exact proportion I forget, and let it run out to a stated quantity, in other words, a reservoir under that, and when the quantity that we had figured on making was run out, we would stop the process."

Yes, sir; that's substantially the process by which we extracted the extract from the coca leaf for use in making "Coca-Cola." That's the method we pursued before we got the Schaffer Alkaloid Works to make the extract.

Redirect Examination by Mr. HIRSCH.

Cocaine was never a part of the formula of "Coca-Cola," and that's proven by a good many witnesses, too, you know.

Deposition of Thomas Leslie Boswell, for Plaintiff.

THOMAS LESLIE BOSWELL.

Direct Examination by Mr. HIRSCH.

I live in Atlanta. I was formerly with the Pink-

(Deposition of Thomas Leslie Boswell.)

erton National Detective Agency, but am now employed by the Coca-Cola Company, as special representative. Yes, sir; I was a detective when I was with the Pinkerton National Detective Agency for about four or five or six months. As special representative of the Coca-Cola Company my duties have been to call on dealers and various soda-fountains throughout the country handling fountain beverages.

I have visited the following towns: Collins, Ellisville, Laurel, Meridian, West Point, Starksville, Mason, Columbus, Oklone, Corinth, Iuca, Ripley, Pontotoc, and Oxford, Mississippi; Montgomery, Tuskegee, Selma, Eufaula, Dothan, Birmingham and Red Bay, Alabama, Pensacola, Tallahassee, Palatka, Jacksonville, Lake City, Ocala and Tampa, Fla.

The tabulation set out below shows the places where I called and the names of the proprietors or dispensers whom I interviewed. I would first go up to the fountain and ask for "Coca-Cola" and observe the spigot from which the syrup was drawn to make the drink. [400] Later in the day I would again visit the same store and ask for a "dope" and observe the spigot from which the syrup to make this drink was drawn, and still later I would again call at the same store and ask for a "koke" and observe the spigot from which the syrup to make this drink was drawn. I would also stand in the vicinity of the fountain on these occasions and observe the spigots from which the syrup was drawn to make and drinks served to customers who asked for "Coca-Cola," "coke" and "dope." In the following tabu-

(Deposition of Thomas Leslie Boswell.)

lation the syrup used to make all the drinks served in response to requests, both by myself, and by the customers whom I observed calling for drinks by those names, was drawn from the same spigot or container in the fountain without exception. After making these spigot tests I would then interview the proprietor or soda dispenser at the establishment visited, inform him of the result of my spigot test, and then ask him what he understood the words "dope" and "coke" to mean when applied to soda-fountain drinks. In each and every instance the proprietor or dispenser without exception stated that he understood these words "dope" and "coke" to mean "Coca-Cola." (The alleged statements of such proprietors and dispensers as to their understanding of the meaning of the words "dope" and "coke," as thus detailed by the witness, are objected to by defendants because hearsay and mere gossip. Objection overruled. Exception.) The (*) in the tabulation below in front of the name of the store indicates that the container from which the syrup was drawn to make these drinks was marked "Coca-Cola." In this tabulation the first column indicates the name of the town, the second the name of the store, the third the name of the proprietor or dispenser interviewed, and the fourth the number of calls for "Coca-Cola" during my observation, the fifth the number of calls for "dope," and the sixth the number of calls for "coke" during the period of my observation.

The tabulation referred to follows:

		Prop. or Dis.	CC.	D.
West Point, Miss.	*P. H. White Drug Co.	Jim Figure, d.		
	City Hall Drug Store	Mr. Turnipseed		
	E. P. Wilson Drug Co.			
	J. B. Johnson	Mr. Tomlinson, d.		
West Point	P. L. Bouchillon	P. L. Bouchillon		
	Barksdale & Bennett Grocery Co.			
[401]				
Starksville	*Jackson & Son Drug Co.	J. A. Jackson		
Starksville	J. A. Clardy	J. A. Clardy	1	2
Starksville	J. T. Kirk		1	
Starksville	*Jas. J. Gill			1
Starksville	Cox Bros. Grocery	Earl Cox		3
Starksville	*C. L. Ferris Book Store	C. L. Ferris	1	2
Macon	*Nichols & Dorah Gro. Co.	L. T. Dorah		
		J. Q. Nichols		
	Gem Pharmacy	E. E. Hammond, P.		
		T. W. Jackson, Jr., d.		
	*Murphy Drug Store	Ed. M. Murphy, P.		
		S. T. Pennington, d.		
		Henry Pattee, d.		
	L. C. Tucker, Grocery	L. C. Tucker		
Columbia	Johnson & Cain Drug Store	E. C. Johnson and S. L. Cain, Ps.	1	1
	Weaver & Harrington	W. B. Harrington		
	Street's Drug Store	W. B. Street		2
	*John R. Laws Druggist			
	Wilson Drug Store	Mr. Wilson	1	1
Columbia, Miss.	L. E. Lides Drug Store	L. E. Lides, P.		
	L. E. Mayfield Drug Co.	L. E. Mayfield		1
Okolone	Elliot & Bell	Mr. Bell, P.		3
	L. E. Gast Bros., Gro.	L. E. Gast		
	Bearden & King Drug Store	W. E. Bearden		2
	Liggen & Bros.	R. H. Liggen, P.		
Corinth	C. A. Turner, Gro.	C. A. Turner, Prop.	2	
	H. E. Walker	R. C. Battles	4	2
	J. M. Mitchell's Pharm.	J. A. Mitchell, P.		
	Henry's Pharmacy	Mr. Henry, P.		
	*McVay & Co.	R. R. McVay		2
	M. M. McAnnis Drug Co.	Mr. McAnnis	1	2
	H. M. Stone's Restaurant and Bakery	H. M. Stone		
	Corinth Drug Co.	H. M. & T. F. Scigman, Ps.		
Holly Springs	Pure Drug Co.	K. C. Campbell, P.		
		J. L. Alverson, d.		
	D. J. Oliver	D. J. Oliver, P.	2	2

		Prop. or Dis.	CC.	D.	K.
		Joe Howard, d.			
	L. H. Dancy	L. H. Dancy, P.	1	1	
	W. C. Robinson	W. C. Robinson		1	
ey	C. M. Pfyfer & Co.	C. M. Pfyfer	1	1	
	R. R. McCord	R. R. McCord	1	1	
Bay, Ala.	Red Bay Drug Co.	J. A. Gray, P.	2		
totoc, Miss.	Furr & Carter Drug Co.	J. M. Furr and R. E. Carter, Ps.	1		
totoc	C. D. Mitchell & Co.	C. D. Mitchell, P.	1	1	
		B. B. Anderson, Cl			
		S. V. Pittz			
		E. C. Nesbitt, d.			
ord	Chilton Drug Store	C. W. Chilton, P.			
	Rowland Drug Store	Herron Rowland, P.			
	Bramlett & Sons	Eugene Bramlett			
tgomery, Ala.	C. M. Chatfield Drug Co.	C. M. Chatfield	4	2	1
	J. J. Johnson Moore	Carter Manton, D.	2	4	
		J. Johnson Moore, P.			
	May's Bakery and confect.	Duncan May and Stewart, Ps.		3	1
	Lyon Head Drug Store	C. T. Ruff, P.		3	1
kegee	L. C. Lewis	Mr. Lewis, P.	2	5	
	Hardin Howard Drug Store	Hardin Howard		2	
	Johnson Bros. Drug Store	E. D. Johnson, P.		2	
a	Rockmille Bros.	R. R. Rockmille	6	5	
	G. A. Swift	E. J. Word, d	1		1
	Tillman Drug Co.	W. P. Cook, Mgr.	3	5	2
]					
acola, Fla.	Central Pharmacy	M. B. Scott, Mgr.		2	
	J. S. Pinkussohn Cigar Stand	R. H. Capers, d. and manager	4	9	1
	Balkcom Drug Co.	B. F. Balcom, Mgr.	1	4	
hassee	Holmes Drug Co.	J. McNair	1	6	
		C. N. Tombs, P.			
	Hardee-Smith Co.	L. K. Cohen		1	
		J. Johnson, Clk.			
City	De Soto Drug Co.	M. H. Tibbals, Mgr.			
	C. E. Lewis	C. E. Lewis, P.	1		
	A. R. Wise & Co.	A. R. Wise	1	5	
onville	Dr. William D. Jones' Drug Store	Wm. D. Jones, P.		5	2
	J. Daniel Boone & Co.	L. M. Holmes, Mgr.	1	3	
	Clark's Drug Store	E. C. Clark, Mgr.	5	10	
a	City Drug Co.	J. H. Houghton, P.	2		2
	Ray's Confectionery	Jas. Ray, P.	2		
	Smith's Confectionery	L. H. Smith, P.			
	Gerrig's Drug Store	J. J. Gerrig	4	2	
	T. W. Traxler	T. W. Traxler, P.		1	

(Deposition of Thomas Leslie Boswell.)

	Court Pharmacy	J. B. Harrel and H. N. Walters	2	
Tampa	Tibbett's Corner	W. H. Tibbetts, P.	4	6
	Val's Corner	Val. M. Antuomo, P.	4	1
		B. L. Robinson, Mgr.		
	Cotter's Pharmacy	Le Roy Cotter, P.	7	7
Dothan, Ala.	M. A. Ellison Drug Co.	R. C. Ellison		
	McCullom's Drug Store	N. H. McCullom, P.	2	3
		D. S. Nash, Prescription clerk, Albert Stevenson, disp.		
	Nix Drug Co.	R. Q. Nix, P.	2	3
		1 call for a "shot"		
Birmingham	Parker Drug Co.	Roy Armstrong, Mgr.	4	8
		Geo. W. Griffith, d.,		
	John W. Patton Drug Co.	C. Q. Loyd, Mgr.	1	
	Adams' Pharmacy	A. R. Moody, Mgr.	3	3

At a number of the establishments visited I also made consumers' tests,—that is to say, I instructed the soda dispenser to ask each and every customer who called at the fountain for either "coke" or "dope" if he meant or wanted "Coca-Cola." I stationed myself in the vicinity of the fountain where I could hear the questions asked by the dispensers and the replies given by the customers. In every instance, without exception, where the customer asked for "coke" or "dope" and was asked by the dispenser if he meant or wanted "Coca-Cola" the customer replied that he did. Below is a tabulation of my consumers' tests. The first column indicates the name of the town, the second the name of the store, the third the number of calls for "Coca-Cola" and the fourth the number of calls for "dope" and the fifth the number of calls for "Coke"; [403]

		CC.	D.	K.
h, Miss.	Dr. M. M. McAnnis Drug Store	62	103	12
Springs	D. J. Oliver	27	21	5
toe, Miss.	C. D. Mitchell & Co.	37	5	3
d, Miss.	Chilton Drug Store	46	52	6
gomery, Ala.	C. M. Chatfield Drug Co.,			
	Disp. Wilkins, Rankin, White, Bradford	51	41	9
gomery, Ala.	J. Johnson Moore;			
	Disp. Wade Pruitt and Carter Masten	41	64	1
gomery, Ala.	May's Bakery and Confectionery (20 min.)		3	1
, Ala.	Rockmille Bros.	22	20	
	C. H. Hurley			
	J. Eagle			
acola, Fla.	Central Pharmacy	8	6	3
	Mgr. Mr. Scott			
	Disp. C. E. Bond			
	R. T. Shuttleworth			
	Dixie Golden			
hassee, Fla.	Holmes Drug Co.	16	27	
	Prop. J. E. McNair			
	Disp. J. R. Hartsfield			
	J. C. Savage			
City, Fla.	A. R. Wise & Co.	10	14	4
	Disp. J. L. Reims			
	Wilbur Townsend			
nville, Fla.	Clark's Drug Store	178	139	6
	E. C. Clark, Mgr.			
	Disp. R. H. Holmes			
	Wm. Holmes			
	R. Scott			
	H. T. Stone			
ka, Fla.	City Drug Co.	5	11	
	Prop. J. H. Houghton			
	Disp. R. B. Holden			
	N. O. Niles			
	Pelton Wilkerson			
Fla.	Court Pharmacy	22	32	6
	Prop. J. B. Harrell			
	Disp. J. W. Dewey			
	Bedford Caldwell			
	Sam Burford			

(Deposition of Thomas Leslie Boswell.)

		CC.	D.
Tampa, Fla.	Cotter's Pharmacy Prop. LeRoy Cotter Disp. Harry B. Davis H. C. Brannan B. C. Knight Roy Hanter Carter C. Loyd	107	142
Dothan, Ala.	Nix Drug Co. Prop. R. Q. Nix Disp. O. W. Sagg Harvey Gover	15	21
Birmingham, Ala.	John W. Patton Drug Co. Mgr. C. A. Loyd Disp. J. E. Curry Vance Thompson W. D. Calloway	65	40
Birmingham	Adams' Pharmacy A. R. Moody, Mgr. Disp. R. T. Wimson R. A. Pruitt H. L. Cage	265	425

(Also 13 calls for "shot"; 2 calls for "Shot-in-the-arm"; 1 call for "Candler's Hy Ball"; 2 calls for "One-with and one-without.") [404]

Out of 22 consumers' tests I heard "Coca-Cola" asked for 1,320 times. There were 1,639 calls for "dope," 104 calls for "coke" and 29 miscellaneous calls. In each instance, as heretofore, when "dope" or "coke" or miscellaneous calls were called for at the fountain the dispenser asked the consumer, "Coca-Cola"? or "Do you mean 'Coca-Cola'?" and the consumer replied in each instance that only "Coca-Cola" was meant. In all of the towns I visited I saw "Coca-Cola" advertising everywhere. It was on signs, boards, bill boards and painted on the sides of walls, stuck up over soda-fountain, on the windows of drug-stores, etc. I did not see any

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advertising of any beverage under the name of "Koke" or "Dope" except at Pontotock, Miss. At that place I went into a small fountain in the front end of a drug-store owned by Ferguson & Reed and called for a "Coca-Cola," and Mr. Ferguson stated that he only had "Dope" and pointed to the wall and showed me the "Dope" and "Koke" sign, and I asked him why he did not sell "Coca-Cola" and he said he was a bottler of "Dope" and "Koke." At Starkesville, at the Jackson & Son Drug Company, during my interview with J. A. Jackson, he stated that he tried "Koke" once and the customers came back on him and said, "That's Hell," and so he quit handling it. In my interview with C. L. Ferris, proprietor of the C. L. Ferris Drug Store, Macon, Miss., he stated, among other things, that a representative of the Southern Koke Company of New Orleans had called on him recently and stated to him that he had a product that was as good as, or better than, "Cocoa-Cola" and tried to induce him to buy a barrel of "Koke" syrup, and Ferris told the representative that to show what he, Ferris, thought of his "Koke" product, he would not have his trade to see a barrel of his syrup for $500 cash. In my interview with Mr. E. C. Johnson and Mr. S. L. Cain of the Johnson & Cain Drug Store, Columbus, Mississippi, those gentlemen stated, among other things, that they would not allow a barrel of substitute to be seen in their store for any price. In my interview with Mr. McAmis of the H. M. McAmis Drug Company at Cornith, Mississippi, Mr. McAmis

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told me that he had a five gallon keg of "Koke" manufactured by the Southern Koke Company, in his store room for seven or eight years. "Q. 123. Look at your notes; did he say he had that seven or eight years?" "A. Yes, sir, he [405] says 'I have had this five gallon keg of syrup manufactured by the Koke Company in my store room for probably 7 or 8 years, that I never used it and it has been setting back there with dust on it."

Besides calls for "Coca-Cola," "koke" and "dope" there were a good many miscellaneous calls such as "shot in the arm," "shot," "coffin varnish," "embalming fluid," "one-with-and-one-without," "give me a brick," "put a little lime in it," and quite a variety of other calls. Each of the customers that called for a drink by these miscellaneous calls was also asked by the dispenser in my presence if he meant thereby "Coca-Cola" and without exception each customer replied in the affirmative. In my interview with Mr. Wise of the A. R. Wise & Company drug-store at Lake City, Florida, Mr. Wise stated that he was trying out "Koke" syrup, but would stop at once, as the drink was a bad imitation, and ship the syrup back to New Orleans, La. He further said that a representative of the Koke Company called on him and stated, "You have calls for 'Dope' and 'Koke' haven't you"? He said, "Yes." The Koke Company representative then said, "Why don't you sell them 'Koke' and 'Dope' syrup, it's unfair to the Koke Company, when they call for 'Koke,'—we have got these names copyrighted, why

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don't you sell them 'Koke' "? Mr. Wise stated that after they had talked it over, and after the salesman had shown him a sample, and after he tried the sample, that he ordered a 30 gallon barrel of "Koke" and had up to that time tried it out probably 15 days, and from his observation, from what the people stated, he said it was a bad imitation of "Coca-Cola" and that he had different people come back on him and kick—said it didn't taste like "Coca-Cola."

There are various ways in which customers ask for "dope." Some say "give me a dope," others "dope and lime," or "two dopes." In asking for "coke" they usually just say "coke" or give me "two cokes" or "coke and lime," "coke and cherry," and some people say "give me a 'cherry-coke' or a "lemon-coke." The public use different expressions over the country in asking for it.

From my personally asking for "Coca-Cola," "dope" and "coke," from my interviews with dispensers, from my observations of the advertising of "Coca-Cola" and the want of advertising of "Dope" **[406]** or "Koke" and from what I have called "consumers' tests," the words "dope" and "Koke" mean "Coca-Cola" and are applied to "Coca-Cola" I have visited 29 towns and have interviewed 160 proprietors, managers and dispensers. I observed 150 calls for "dope," 26 calls for "koke" and 120 calls for "Coca-Cola." The syrup used for making the drinks served in response to all of these calls was drawn from the same container. In the con-

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sumers' tests above-described I heard the questions as put to the consumers by the dispensers. I carried out 22 consumers' tests. I heard the responses of the customers to the questions of the dispensers. Every customer asking for a "dope" or "Koke" replied, when asked by the dispenser if he meant or wanted "Coca-Cola," that he did.

At the City Hall Drug Company, in West Point, Miss., Mr. Turnipseed said that he recognized the names "dope" and "koke" as nicknames for Coca-Cola, but that he didn't sell Coca-Cola because it was cheaper to buy something else and he had recently been in bankruptcy and his credit was not very good with the Coca-Cola Company.

At Jackson & Son, Drug Company, in Starkesville, I interviewed J. A. Jackson who stated that he had been in business for 15 years and recognized "dope" and "koke" as nicknames for Coca-Cola; he said he had tried "Koke" once and the customers came back on him and said "That's Hell, so I quit."

Mr. E. E. Hammond, proprietor of the Gem Pharmacy, Macon, Miss., stated that the representative of the Southern Koke Company of New Orleans, La., said that he had a product manufactured by the Southern Koke Company that he could save 50¢ per gallon on instead of selling Coca-Cola.

In my interview with Mr. Pfyfer, of C. M. Pfyfer & Co., Ripley, Miss., he stated that a representative of the Southern Koke & Dope Company, of New Orleans, had called and promised to ship him, complimentary, half a gallon of "Koke" syrup to be tried

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out at his fountain and if it sold he would ship him a ten-gallon order; instead of shipping the half gallon, they shipped a gallon and raised his order from ten gallons to a half barrel, **[407]** and he was notified by the Railroad Company that there was a half barrel of "Koke" syrup consigned to him with the way bill from the Southern Koke & Dope Company of New Orleans. Mr. Pfyfer stated that the representative of "Koke" Company said that it could be dispensed for Coca-Cola, with the consideration that, even if the people couldn't tell the difference, he would sell his product instead of Coca-Cola. The representative of the Southern Koke Company made a proposition to him that, if he would ship him half gallon of his syrup and it would sell and people couldn't tell the difference from Coca-Cola syrup, he, Mr. Pfyfer would order ten gallons. (Objected to as hearsay.)

Mr. Chilton, of the Chilton Drug Store, Osford, Miss., stated that a lady representing the Southern Koke Company called on him and tried to sell him "Koke" syrup and said he couldn't tell the difference between the "Koke" and the "Coca-Cola" syrup. "Well" said Dr. Chilton, "Why don't your Koke Company sell their syrup to the Coca-Cola Company, as they would be glad to get it"? and then the lady left the store. Dr. Chilton said it was a fine looking girl and if she hadn't been selling "Koke" or been selling anything else but "Koke," "I would have bought it, and had I not been selling Coca-Cola I would have bought it," but said he

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couldn't hardly sell Coca-Cola and Koke at the same time as it would be demoralizing to the trade.

Mr. Howard of Hardin Howard Drug Store, Tuskegee, Alabama, stated that he had a letter from the Southern Koke Company threatening him if he sold Coca-Cola for "Dope" and "Koke" in response to calls for "dope" and "koke," they were liable to prosecute. So he, Mr. Howard, asked some of his customers what they meant by "Dope" and "Koke" and each one replied that they meant Coca-Cola only, so Mr. Howard stated that he would continue to serve only Coca-Cola when "dope" and "koke" was asked for.

Mr. Jones, proprietor of William D. Jones' Drug Store, Jacksonville, Fla., stated that a representative of the Southern Koke Company had once called on him, and stated that it was about time he was lining up; that there was over two-thirds of the people in Jacksonville selling "Koke" syrup to-day for Coca-Cola, and people couldn't tell the difference. **[408]**

I interviewed Mr. J. H. Haughton, proprietor of the City Drug Company, Palatka, Fla., and he stated that a representative of the Southern Koke Company had called on him about two months previous and asked him why he, Haughton, in response to "dope" and "koke" calls didn't sell "Koke" syrup, and declared it was unfair competition to the company to sell Coca-Cola when "dope" and "koke" was called for, as the terms "dope" and "koke" was copyrighted; whereupon J. H. Haughton agreed to

(Deposition of Thomas Leslie Boswell.)

try the syrup and did so. Mr. Haughton handed me a card which is here "Number 94" attached to a bill for his order of Koke syrup from the Southern Koke Company at New Orleans, La., and said that he thought that it would be a violation of the law to sell Coca-Cola syrup when "dope" and "koke" was asked for, inasmuch as the Southern Dope & Koke Company had had the names "Koke" and "Dope" copyrighted. I saw in the card that they state that he would be liable to prosecution, and he didn't want to get in any law suit with anybody, he wanted to do a fair business and be fair to everybody. I said, "Is there any question in your mind, as to whether the names "dope" and "koke" are nicknames for Coca-Cola"? and he said that that had always been his understanding, that the names or terms "dope" and "koke" when applied to a fountain beverage meant only Coca-Cola; that since he received this information from the Southern Koke Company he was only using precaution against being sued; just then and just at that time a doctor there in town came in and said "Give me a dope" and I turned to Mr. Haughton and said "Mr. Haughton, just ask this man what he means when he asks for dope." So he said "What do you want Doctor, "dope" or "Coca-Cola"? "Why," he said, is there any difference? Well," he said, "I just wanted to know what you mean." "Well," the Doctor says, "I mean "Coca-Cola," I thought everybody knew what "dope" meant." This Doctor was served and walked out, and just as he walked out, a man came in from the

(Deposition of Thomas Leslie Boswell.)

rear end of the store, came up to the fountain and he asked for a "koke," and I said "Ask him there, you can verify for yourself what the terms "dope" and "koke" mean when applied to a soda-fountain beverage in connection with a fountain beverage"; he walked over and asked this man to repeat it and the man says "Koke"; "well," he says, "koke" or "Coca-Cola." The man said "What"? Mr. [409] Haughton said "Koke" or "Coca-Cola"? The man said I have been drinking at this fountain three years, and I might use nicknames but I never knew there was any difference between the Coca-Cola and "koke" and "dope." I sometimes say "koke" and I sometimes say "dope" but I always want "Coca-Cola." Then Mr. Haughton came back to me and said he was thoroughly convinced that the names "koke" and "dope" were only nicknames for Coca-Cola and said that he would take the "dope" or "koke" syrup that he had in the container and sell only in response to calls for "dope" and "koke" Coca-Cola syrup. I heard that entire conversation.

Mr. J. J. Gerrig, of Gerrig's Drug Store, Ocala, Fla., stated that Mr. J. C. Mayfield called on him and got sore because he wouldn't sell "Koke" syrup, so he told Mr. Mayfield that when he got ready to sell a substitute for Coca-Cola that he wouldn't buy from a manufacturer, but that he would manufacture his own substitute which he thought was as good, if not superior, to Mayfield's product. He said he had always sold Coca-Cola syrup and for that reason thought he had the best Coca-Cola trade in town.

(Deposition of Thomas Leslie Boswell.)

Mr. Leroy Cotter, proprietor of Cotter's Pharmacy, Tampa, Fla., stated that a Southern Koke Company representative had once called on him and tried to sell him a product manufactured by the Southern Koke & Dope Company, with the statement that the product could easily be sold for Coca-Cola. Mr. Cotter said he dismissed him and never wasted any time with a substitute representative.

Cross-examination by Mr. LITTLETON.

Yes, sir, I was with the Pinkerton National Detective Agency before being employed by the Coca-Cola Company. Yes, sir, I was a detective with that concern and am now in the employ of the Coca-Cola Company. I was not in the employ of the Pinkerton National Detective Agency immediately prior to my employment by the Coca-Cola Company because I was out for some time doing nothing. The reason why I quit the Pinkerton Company was because it was matter of lay off with me, work was slack, so they told me, during the summer months, that it was necessary for me to take a vacation, and, as the vacation was without pay, I decided to look for a new position. **[410]** In all the rounds I have made, and in all the "Coca-Cola" advertising I have seen, and in all the containers of "Coca-Cola" I have seen, I have never seen a single instance where the names "Dope" or "Koke" were used or employed in "Coca-Cola" advertising, or on "Coca-Cola" receptacles. I might state here that a man called up from the country somewhere and said to a bottler "send me down 25 cases of "dope"—the bottler would say, "I haven't

(Deposition of Thomas Leslie Boswell.)

got any "dope' " "Well," the man would say, "I mean 'Coca-Cola.' " "Well," the bottler would say, "then so state it." The Coca-Cola Company would answer him and state that it didn't have any "dope" that it made "Coca-Cola" and would ask him what he wanted. One man at West Point, Miss., wrote a **[411]** letter saying, "send me down a dozen cases of 'dope.' " The company wrote him a letter asking what he wanted, what he meant by "dope" and he said "Coca-Cola."

Well, I don't know that I ever have in all my rounds run across any of the other cola or caffeine—containing beverages, I never saw any that I know of except "Dope" and "Koke"—the Southern Koke Company's "Koke." I saw and tasted some of them at Houghton's place down in Lake City, Fla. To me it looked like "Coca-Cola" and tasted a great deal like it. In my rounds I ran across a great many nicknames for "Coca-Cola," such as Dope and Koke, "give me a shot," "give me a shot in the arm," "give me a pill," "a dose of lead," "a little cocaine," "coffin varnish," "embalming fluid," "Candler's high-ball," "give me a Candler cocktail," "a brick in the Candler building," "put a brick in the Candler building," etc. In the various places I went to, the way I knew that it was "Coca-Cola" that was being dispensed and not some other drink was by the fact that the container was usually labeled "Coca-Cola" and I would often ask if it was "Coca-Cola" and they would tell me "Yes." The only way I can recognize "Coca-Cola" when a man gives it

(Deposition of Thomas Leslie Boswell.)

to me is by the color. Well, I am not a chemist; I can't analyze it and could not tell whether it is "Coca-Cola" or not except by what they tell me. No, sir, I was not given a list of customers to see before I started on this trip,—not even a list of the towns. I was just told to go wherever I wanted to,—I mean, to start out somewhere and meet somebody and get a list—I never got a list from here. You say that by a strange coincidence I met only "Coca-Cola" dealers; well, I just went into a town and if I wanted a "Coca-Cola" I would go to a fountain and call for a drink—that's the place I would investigate. We would not know who was in that town,—I didn't—not even the bottler of "Coca-Cola"—I would just go in and buy a drink wherever I wanted to. You ask if every fountain I went to was not a "Coca-Cola" fount; well, I never went to a fountain in my life that they didn't sell "Coca-Cola," except the one here in Mississippi who said he only sold "Koke." The way I know they only sold "Coca-Cola" at the fountains which I have been going to all my life is because in response to "Coca-Cola" they always served that **[412]** drink,—that is, it was either "Coca-Cola" or something that looked and tasted so much like it that I couldn't tell the difference.

Redirect Examination by Mr. HIRSCH.

You ask what I mean by "Coca-Cola" fount, and if I ever went to a fountain that was named a "Coca-Cola fount"; no, sir, I didn't exactly mean a "Coca-Cola fountain," I mean a fountain, a soda-fountain.

(Deposition of Thomas Leslie Boswell.)

No, sir, no place or town or store was selected for me by anybody. I went to every one I mentioned of my own free will. I selected the places and picked them out. On the "Coca-Cola" advertising which I saw the name "Coca-Cola" was on it, yes, sir. It was produced in script like the name "Coca-Cola" is produced there (indicating Plaintiff's Exhibit #95). No, sir, I never did see "Coca-Cola" in any other script except that, anywhere.

Deposition of Charles Howard Candler, for Plaintiff (Recalled).

CHARLES HOWARD CANDLER (Recalled).

Cross-examination (Resumed) by Mr. LITTLETON.

Yes, sir; I was on the stand yesterday. I herewith file as Exhibit #88 the label that we use on the barrels and kegs of "Coca-Cola." We are not using Exhibit #88 now. It was used until last fall, when the net weight law went into effect. Since then we have been using the labels filed as Plaintiff's Exhibit #89. These labels are placed on barrels and kegs containing "Coca-Cola" and sent broadcast all over the country. The border around these labels purports to be a picture of coca leaves and cola nuts. Why, sure, we use "Merchandise No. 5," still. Our company has issued quite a number of advertising booklets, and we issued one soon after the trial of the case in Chattanooga of the U. S. Against 40 Barrels and 20 Kegs of Coca-Cola." No, sir, I don't know that it is true that we found in our business that

(Deposition of Charles Howard Candler.)

the impression was broadcast that "Coca-Cola" had cocaine in it and that that was why we issued this booklet, stating that it had no cocaine in it. No, sir. I do not know that a large number of people had the idea that "Coca-Cola" had cocaine in it.

"XQ . 18. Well, if they didn't have an idea that 'Coca-Cola' had cocaine in it, why did you want to state that?"

(Mr. HIRSCH.—"Of course, we are objecting to all this line of cross-examination.") [413]

"A. I suppose it had been charged or supposed by certain individuals that 'Coca-Cola' had cocaine in it, is the reason they printed the denial of the allegation." Yes, sir; I testified in the case at Chattanooga referred to above and in answer to a question there I stated in substance: "We would buy the whole leaf (meaning the coca leaf) in bales and grind it in a mill; we would also buy cola nuts and mix them—I have forgotten the proportion, it has been so long—in percolators, first mixing it up in what we call a wooden bog, wetted that down with a certain quantity—just a crude box for packing,—and added a certain quantity of phosphate of lime, and after they were thoroughly wetted, pack them in the percolator, so called *magma* (?) and let them stand possibly 24 hours, and then we would put on them diluted alcohol to which the white or a white California wine had been added—the exact proportion I have forgotten—and let it run out to a stated quantity, in other words a reservoir under them, and when the quantity we had figured on making was run

out, we would stop the process." I stated in answer to that same question in Chattanooga that I did not know whether or not, under the process just detailed, there would be any cocaine in the extract so derived from the coca leaves, and I don't know now. Yes, sir, the process just quoted above is the essential method by which we got the extract from the coca leaves prior to the time the Schaffer Alkaloid Works began to make this extract. Yes, I made it according to that method myself as manager of the company. I don't remember, sir, how long I made it according to that method. There are eight ingredients or groups of ingredients that enter into the mechanism of "Coca-Cola" syrup. One ingredient is burnt sugar coloring, or caramel; one is sugar, one is phosphoric acid, one is lime juice; one ingredient is caffeine and that is put in in the pure state; one consists of flavoring oils dissolved in alcohol. There are a number of flavoring oils in that extract—they are concentrated oils and have a strong flavor. In addition to that, we put glycerine into the syrup and a product which we call "Merchandise No. 5." You ask if "Merchandise No. 5" is not the product which has, or is supposed to have, this coca and cola, diluted or preserved with alcohol; I don't recognize it by the way you describe it. **[414]** We put in "Merchandise No. 5" as manufactured and furnished by Schaffer Alkaloid Works, but I don't know myself what is in this "Merchandise No. 5." I don't know whether it has any coca, or extract of coca leaves, in it, or whether it has any cocaine in it, except from

(Deposition of Charles Howard Candler.)

hearsay. I understand that the difference between the method by which Dr. Schaffer manufactured this "Merchandise No. 5" and got what extractive matter he did, if any, out of the coca leaves, and my method, is just a mechanical difference. I went through his laboratory and saw the difference in the mechanical method, or process, as compared to the one we pursued. We put water in "Coca-Cola," too, that makes nine ingredients. On the advice of counsel, I refuse to answer whether or not any ginger enters into "Coca-Cola." On the advice of counsel I refuse to answer whether or not these flavoring oils, or a number of them, which are put in "Coca-Cola" are derived from the peelings of the fruit from which they come. I am not a chemist and have never analyzed "Coca-Cola" syrup or "Merchandise No. 5." The "Coca-Cola" syrup which the Coca-Cola Company makes for the bottlers to be used in making the bottled "Coca-Cola" is different from the "Coca-Cola" syrup that is used for making the soda-fountain beverage.

Redirect Examination by Mr. HIRSCH.

Yes, sir; I have made up "Coca-Cola" with our regular ingredients in it, including "Merchandise No. 5," and without "Merchandise No. 5." I don't remember that I have ever tasted it to see if I could detect any difference in the flavor. Some years ago I sent Dr. Charles E. Caspari, at St. Louis, some with and some without. That was immediately before the trial of the case above referred to at Chattanooga. My information and observation is that

(Deposition of Charles Howard Candler.)

the difference between the process I used in making "Merchandise No. 5" and that which the Schaffer Alkaloid Works uses is simply a change of process. I have seen Schaffer manufacture "Merchandise No. 55" and have seen coca leaves and cola nuts go in it. Since I have been with the Coca-Cola Company there has never been any change in the formula of "Coca-Cola." The same formula is used now as was used when I commenced the manufacture of it. I also **[415]** sent some samples of "Coca-Cola," with and without "Merchandise No. 5" in them, to Dr. Wesner, living at Chicago. Yes, sir, in manufacturing "Merchandise No. 5" I used an extract of coca leaves and cola nuts, and so far as I know Dr. Schaffer uses an extract of coca leaves and cola nuts in making "Merchandise No. 5." I have been to Maywood, N. J., and have seen Dr. Schaffer's process and saw them using the coca leaves and cola nuts. I saw "Merchandise No. 5" manufactured, saw the ingredients go into it, and coca leaves and cola nuts were used. We use "Merchandise No. 5" in every batch of "Coca-Cola" we make, as received from the Schaffer Alkaloid Works, without change. There has been no change in the "Coca-Cola" formula since the case at Chattanooga. It is the same now as it was then. The difference between the bottled syrup and the soda-fountain syrup is that the former is a heavier syrup, more sugar being used in the manufacture of the bottlers' formula than in the fountain formula; also, a large quantity of coloring, and a relatively larger *quality* of caffeine.

(Deposition of Charles Howard Candler.)

The percentage of caffeine is practically the same, based on the quantity of sugar. I do not just now recall the percentage. In every other manner they are essentially the same. We make this difference in order to have as near a uniform product to dispense both in bottles and at soda-fountains as possible, due to the fact that bottlers use more water in the carbonation of their goods than soda-fountain dispensers do. Yes, sir, I heard Dr. Crampton testify at Chattanooga in the trial referred to, but it is vague in my mind as to what percentage of cocaine he said he found in "Coca-Cola" when he analyzed it, because he was on the stand a very short time. My recollection is he stated there was a trace of cocaine in the sample he examined some years ago. I think he was required to enumerate the tests he had used to find whether it was cocaine or not.

Recross-examination by Mr. LITTLETON.

Yes, sir; this process I described a while ago, which I used in making the extract from the coca leaves, the process that was described, that's all I did to get this extract out—that's all I did to it before I put it into the syrup. If the record in the Chattanooga case above referred to shows that I testified that I saw coca leaves [416] and cola nuts undergoing treatment at the Schaffer Alkaloid Works, but that I didn't see those leaves or those nuts actually put into "Merchandise No. 5," the record is wrong. The Schaffer Alkaloid Works treated the leaves and the nuts—according to Dr. Schaffer, who was with me on this visit,—in their process which turned out

(Deposition of Charles Howard Candler.)

"Merchandise No. 5." He showed me the various steps in the process as it went forward, which process resulted in the end in "Merchandise No. 5." The whole thing was connected as a laboratory process would be. I think Dr. Schaffer told me that all the cocaine was extracted from the coca leaves. Not all of the other alkaloids were extracted that I know of. No, sir, the associated alkaloids in the coca leaves were not extracted along with the cocaine——not that I know of. The fact of the business is, I don't know whether they were or not, and I don't know what properties of the coca leaves were put into "Merchandise No. 5." I don't know whether or not any properties of the coca leaves, or any chemical or physiological properties thereof entered into the composition of "Merchandise No. 5." Mr. Hirsch admitted that all cocaine and associated alkaloids are extracted from "Merchandise No. 5." The Schaffer Alkaloid Works are manufacturers of cocaine. (Mr. HIRSCH—"We admit, for the purpose of this record, that they are large manufacturers of cocaine. I am not certain that they are the largest in the United States, but I think they are, that is my impression.") Presumably Dr. Schaffer takes the cocaine which he extracts from the coca leaf in this process of making "Merchandise No. 5" and sells it on the market as cocaine. I don't know of any treatment which he gave the cola-nuts. My recollection is he just ground them up and put them in there.

(Deposition of Charles Howard Candler.)

Re-redirect Examination by Mr. HIRSCH.

Plaintiff's Exhibit #90 is one of the books that was gotten out by the Coca-Cola Company immediately after the trial of the case of the United States against forty barrels and two kegs of "Coca-Cola" at Chattanooga, above referred to. Plaintiff's Exhibits #91 and #92 are others of such booklets. So far as I know the facts stated therein are true. My object in treating the coca leaves, before Dr. Schaffer commenced manufacturing them, was to obtain "Merchandise No. 5." I treated the coca leaves in the manner heretofore stated in order to obtain [417] "Merchandise No. 5."

Deposition of Nick D. Chotas, for Plaintiff.

NICK D. CHOTAS.

Direct Examination by Mr. ROGERS.

I am in the cigar and soda-water business, corner of Houston and Ivy Streets, Atlanta, Ga., and have been in that business about six years. I have dispensed, during all of that time, soda water and "Coca-Cola." Candler is the maker of "Cola-Cola." Sure, I have heard of the Coca-Cola Company. Yes, sir, when I speak of "Coca Cola" I mean the drink that is advertised all around. I have known "Coca-Cola" about ten years. Yes, sir; I am around the *around the* fountain and hear people ask for the drinks they want. I work behind the fountains most all the time. Sure, I know the names people use when they ask for any particular drink which they wish. Lots of them say "dope," lots of them says

(Deposition of Nick D. Chotas.)

"Coca-Cola." Yes, sir; when a man asks for "dope" I give him "Coca-Cola." No, "Coca-Cola" has never been refused by anyone who asked for "dope" on the ground that it wasn't what he wanted. Q. 17. How long have you heard the word Dope used as a nickname for Coca-Cola? A. I have heard it used ever since I have been behind the fountain, about nine years now. I get my "Coca-Cola" syrup in red kegs. No, sir, I never saw a "Coca-Cola" keg or barrel that wasn't red. If I saw a pile of red kegs on the sidewalk in front of some place where there was a soda-fountain I would think they were "Coca-Cola" barrels. No, sir; if I should order a "Coca-Cola" to be served to me and the dispenser should serve me a drink of a golden yellow color I would not think I was getting "Coca-Cola." No, sir, I have never seen the named "Coca-Cola printed in advertisements or on labels in any way except the script style.

Cross-examination by Mr. LITTLETON.

The other drinks I dispense at my soda-fountain, besides "Coca-Cola," are chocolate milk, cherry phosphate, Hires' Root Beer, cream soda, etc. I do not dispense sarsaparilla, "Moxie" or birch-beer. The color of the root beer which I dispense is black—well, sort of like "Coca-Cola" only it is very dark color, sort of like "Coca-Cola" only it is very dark golden color. Hires' Root Beer is more like "Coca-Cola," more the color of "Coca-Cola." Well I don't know whether or it it would be very hard, or in fact impossible, unless [418] you made a very

(Deposition of Nick D. Chotas.)

careful examination of the two colors together, to tell whether a drink was "Coca-Cola" or Hires' Root Beer—by the color you can't, but the root beer when you dispense it from the soda-fountain has a very heavy foam and "Coca-Cola" has not. I have seen foam on "Coca-Cola," but it is not that thick. No, sir, I have never seen the wagon of Hagan & Dodd Company—the "Ko-Nut" people—going around town. I have been in Atlanta about ten years and during that time I have never seen any wagons with the name of Hagan & Dodd on them, or the name "Ko-Nut" or "Afri-Cola" on the barrels. I have seen "Ko-Nut" wagons, with the "Ko-Nut" on them. The way I know they were "Ko-Nut" wagons, I just noticed the sign up there, sometimes I am looking to buy ginger-ale, I have seen them pass and I seen him and may be think he was ginger-ale, and I see on the wagon "Ko-Nut," "Lemo-Lime" and things like that, that is the only thing I notice. No, sir; I never have seen any of their barrels or kegs, nor have I seen the drink "Ko-Nut," or the syrup from which it was made. Yes, sir; I have seen bottles of "Ko-Nut." I did not see them up close—just seen them pass by the street there. I wouldn't never know a barrel if I was to see it. No, sir; I have never seen any "Wise-Ola," "Ala-Cola" "My-Coca" or "Ameri-Cola," but I have seen "Chero-Cola." The color of that is—well I don't know, it is flat looking stuff. It was sort of dull black. No, sir it was not about the same color as

(Deposition of Nick D. Chotas.)

"Coca-Cola," it was all black, flat looking stuff. I am 23 years old and I am a Greek. I have been in this country about ten years.

Deposition of F. M. Green, for Plaintiff.

F. M. GREEN.

Direct Examination by Mr. ROGERS.

I am in the drug business at the corner of Forsyth and Luckie Sts., Atlanta, Ga. I have been there almost two years. Before that I was in the drug business at Ellwood, Indiana, for 20 years. I have had a soda-fountain continually all the time. Among the drinks I have served at the soda-fountain are limeade, ice cream soda, chocolate milk, "Coca-Cola," mentho-peps. The Chandler Company of Atlanta, Ga.—the Coca-Cola Company,—makes "Coca-Cola." **[419]** Yes, sir, that is the drink which is generally advertised all around. I have handled it about 16 or 18 years, I think, both at Atlanta and at Ellwood, Ind. I hear people ask for pretty near every drink; I didn't at Ellwood, Ind., so much. Yes, sir. I sometimes wait on the fountain. Yes, sir, I can say that I am familiar with the names used in ordering drinks there. When they want "Coca-Cola" I have heard them say three or four different things—"Candler's Highball," "dope," "Coca-Cola," "koke." "Q. 21. What do you dispense when they ask for 'koke' or 'dope' or 'Candler's Highball'?" "A. I never carry anything in there but 'Coca-Cola.'" You ask what the purchaser means by "koke," "dope" or "Candler's

(Deposition of F. M. Green.)

Highball"; well, if you have a new boy and he don't know the name he will come back at them and say, "Coca-Cola?" I have heard "koke," "dope," and "Candler's Highball" for 15 or 16 years at the fountain as meaning that one thing only, namely, "Coca-Cola." Yes, sir; that was true also at Ellwood, Ind. When a man asked for "koke" or "dope" up there he got "Coca-Cola." No, I have never heard any body say that "Coca-Cola" wasn't what he wanted when I served "Coca-Cola" to him in response to a request for "dope" or "koke." I get my "Coca-Cola" in red kegs. I have never seen a "Coca-Cola" barrel or keg that wasn't red. If I should see a dray coming along down the street with red barrels and kegs on it I would think it was "Coca-Cola" right away. If I should call up the Coca-Cola Company over the telephone and order a keg of "Coca-Cola" and presently a delivery wagon would come around and deposit on my sidewalk a white keg my conclusion would be that it had not delivered what I had called for, or else that they had failed to paint the keg. If I should attempt to sell to customers at my fountain asking for "Coca-Cola," "dope," or "koke," a drink that was light yellow in color I do not think I could do it; they would know immediately that it wasn't "Coca-Cola,"—what they had been used to getting. You ask what there is about "Coca-Cola" as it is dispensed at the fountain, in the glass, that is distinct, if anything; well, the color. Yes, sir; I think I can tell a glass of "Coca-

(Deposition of F. M. Green.)

Cola" when I see it. Yes, sir, I am familiar with the "Coca-Cola" advertisements. [420] Well, I think it has been the most highly advertised drink in the world. As to whether or not I have noticed any particular form in which the word "Coca-Cola" has been printed in these advertisements, I would say that I noticed the coloring and the sort of scroll "C's"—yes, sir; the script. No, sir; I never did see a "Coca-Cola" advertisement that was not in that form.

Cross-examination by Mr. LITTLETON.

During the 22 years I have been in the soda-water business, as clerk and proprietor, I have dispensed from the soda-fountain root beer and sarsaparilla. Root beer is a brownish red color,—well, I would say more of a brown. I would not say an amber brown, or anything of that kind, I would say a distinct brown color. As dispensed at soda-fountains I can tell the difference at once between "Coca-Cola" and root beer by their color—that is if it is genuine Hires' Root Beer. I am figuring on that, because it is the one advertised. If a man was to make up his own then he might get the color identical with "Coca-Cola," but a standard brand, I am figuring on, is darker than "Coca-Cola." I don't know how long I have been handling Hires' Root Beer, but it has been ten or twelve years, though, any way. Yes, sir; we handled root beer before that, the one that we made ourselves. Well, the color of it varied. The color of the sarsaparilla we handled was a brown color. No, there was no red in it at all, we just used

(Deposition of F. M. Green.)

caramel coloring to make the brown, and nothing else. The color of "Coca-Cola" is an amber brown, not as deep a brown as the other. No, the three drinks, "Coca-Cola," sarsaparilla and root beer, as dispensed to the public at soda-fountains, are not practically the same color,—root beer is dark. As to sarsaparilla it depends very much on who makes it. No, I have never seen any soda-fountain beverage at all, dispensed from the soda-fountain, of substantially the same color as "Coca-Cola," or so close to the color thereof that I couldn't distinguish it readily at a glance. Yes, sir, I could distinguish every other drink that I have seen in a soda-fountain readily at a glance—that is, distinguish it's color. Yes, sir, I could tell the difference between Hire's Root Beer and "Coca-Cola" at a glance, and I could tell the difference between [**421**] the root beer which we made before Hires' Root Beer came out, and "Coca-Cola," absolutely, at a glance. I have seen "Moxie" and that is a deep brown color. "Moxie" is a deeper brown than "Coca-Cola." Yes, sir, it is along the same kind of color, it is a shade of brown. Root beer and sarsaparilla are colored with caramel. I remember seeing sarsaparilla on the fount ever since I was a small boy. I am now 42 years of age. I have seen it since I was about ten years old anyway—that is to say, I have seen it on the market for 32 years and it has been substantially the same color during all of that time that it is to-day, but it varies with whoever makes it. Hires' is always standard color, there is no difference. I have seen "Moxie" on the market

(Deposition of F. M. Green.)

about 1888. Yes, sir, I dispensed ginger-ale at my soda-fountain. I don't know whether that is colored with caramel or not. Yes, sir; I have made sarsaparilla and root beer myself way back there years ago, and I used caramel to color it. Yes, sir, caramel was used at that time almost universally as a coloring matter for drinks that they wanted to color a brown color. That is the only thing they could color them with and get by with it. I mean by that, that caramel wouldn't make a precipitate and thing of that kind. Other coloring matter would make a muddy precipitate.

No, sir; I have never handled any other drink at my soda-fountain that tasted anything like "Coca-Cola." I have been a customer of the Coca-Cola Company of Atlanta, Ga., ever since I first began to handle that stuff. No, sir; I do not know the Hagan & Dodd Company here. I see a drink "Ko-Nut" advertised on the wagons around town and I see it out at the ball games. I have never seen any "Afri-Cola," but I have seen it advertised in The "Western Druggist," a magazine published in Chicago. I know of a number of drinks on the market to-day of substantially the same color, taste and appearance as "Coca-Cola." They are all aping "Coca-Cola"—that is they are all trying to get the brown color out of it and something to look like "Coca-Cola" as near as possible. I have had people trying to sell me imitations of "Coca-Cola" at the price of a dollar a gallon, but I never bought any of it. They want me to serve it for coca-cola because it would be cheaper.

(Deposition of F. M. Green.)

[422] No, I don't know how many such drinks there are on the market. There might be a dozen. I don't know. Oh, I guess when the boys step out, something of that kind, I want on the soda-fountain, nothing like a regular thing, just to accommodate the boy or something of that kind, when he steps out. No, I don't know the reason why people use the word "dope" when they want "Coca-Cola," I never knew the origin of it. None of my customers during all the time I have been in business ever intimated to me the reason why they use the word "dope." I really wouldn't know why they use it, just simply it is a slang phrase for it. "Dope" means the influence of some drug to deaden the senses, or something of that sort. Yes, sir, "a dope fiend" is frequently used with reference to a cocaine fiend—that, and morphine as well.

Redirect Examination by Mr. ROGERS.

When I talk about "dope on the horse races" that hasn't anything to do with morphine or opiates. No, if some one were talking about the "dope on the baseball game" that would not have anything to do with opiates or morphine or anything of that sort. No, sir, if a man should ask me what the "dope" is on a certain thing I would not understand that he had reference to narcotics; it's information he is after then. If a man goes to a soda-fountain and asks for "dope" he don't mean that he wants to be put to sleep, or anything of that kind, he means that he wants "Coca-Cola." Yes, sir; "dope" in that connection, as applied to a soft drink, is a slang phrase

(Deposition of F. M. Green.)

for "Coca-Cola." When a man comes to my soda-fountain and asks for a "Candler Highball" I give him a "Coca-Cola." I have no reason to suspect that is not what he wants. The first time I heard the word "dope" my father made a trip here to Atlanta during the Exposition, somewhere around 1895 or 1896, and came back telling about a drink they had at a drug-store in Atlanta, like Benjamin's Pharmacy, which they called "Dope" and sold at the soda-fountain. We have never served anything but "Coca-Cola," always. Yes, sir, when a purchaser asks for "dope" always give him "Coca-Cola." No, sir, I have never had anybody to refuse it on the ground that it was not what was wanted. [423] It has been about 17 years since I first heard the word "dope" used in such connection as "the 'dope' on race horses," or "the 'dope' on base ball games," etc.—when I was a baseball fiend, I could not count the years back, but I have been a fiend on baseball ever since that time. I could not say whether the use of "dope" in that connection came out in the year 1905,—I don't know.

Deposition of George Alfred Harbour, for Plaintiff.

GEORGE ALFRED HARBOUR.

Direct Examination by Mr. ROGERS.

I live at 340 Ponce De Leon Avenue, Atlanta, Ga. I am the proprietor of Harbour's Smoke House and I have a soda-fountain, which I have been conducting for about five years. Yes, sir, I dispense "Coca-Cola" at my fountain. The Coca-Cola Company of

(Deposition of George Alfred Harbour.)

Atlanta makes "Coca-Cola." Yes, sir; I mean by "Coca-Cola" the drink that is so extensively advertised. We have lots of it down in our place of business, glasses, chandeliers and everything. Well, I can't remember the first drink I ever had of "Coca-Cola," I was a youngster then in Rome, my old home. I bought it on a free ticket. That must have been along in 1894, I imagine. Oh, yes, in my present place of business I am around the fountain and hear people ask for drinks and know the names they use. Well, almost six or eight people out of ten often ask for "Coca-Cola" under the name of "dope." Yes, sir; I recognize "dope" as a nickname for "Coca-Cola." Well, yes, they use other nicknames as well. They call it by everything under the sun, almost, some of them call it "shot," some of them call it "koke" and "dope" and "Candler's Highball,"—well, everything else. I believe if they were to come in and ask for a thing we didn't know what they were talking about, we would serve them "Coca-Cola." When a man comes to my soda-fountain and asks for a "dope" or a "koke" I understand him to mean "Coca-Cola" and "Coca-Cola" is what I serve. No, sir, I have never had anybody to refuse "Coca-Cola" as not being what they desired. I don't know that I ever called "Coca-Cola" by the names "koke" or "dope" before I got in business—I may have. Of course, I call for it now under that name myself and I suppose ever since I can remember I have known it as [**424**] "dope." However, I have noticed it more since I have been in business than I ever did

(Deposition of George Alfred Harbour.)

before, because I have been in closer contact with it now than I have ever been before. I get my "Coca-Cola" in red kegs. I have never seen a "Coca-Cola" keg that wasn't red. "Coca-Cola" kegs have an individuality about them that is easily distinguishable from any other drink, anything that I have ever bought, and when I see them setting out there on the street I know it is a "Coca-Cola" keg. The most conspicuous thing about them is a red keg—painted red; the other most noticeable thing, if you are close to it, is the label on the end, the same label that is used on all of them I ever saw. No, sir, I cannot serve to my customers asking for "Coca-Cola," either by it's name, or by any of its nicknames, a golden yellow beverage because they would know it was not "Coca-Cola" by its color. I believe I could recognize "Coca-Cola" by it's color. I know that all I ever saw had the same color, a brownish red color. Yes, sir, I can tell it by the taste.

Cross-examination by Mr. LITTLETON.

I moved to Atlanta, from Rome, Ga., in 1900, and have been in the soda-water business 5½ years. I have never seen the drink "Ko-Nut" or "Afri-Cola" that I know of. Well, yes, I have seen other drinks on the market similar to "Coca-Cola" in color; you might say Hires' Root Beer is similar to a certain extent in color, but there is something about it that you can tell it isn't "Coca-Cola." I don't know whether the color of Hires' Root Beer and of "Coca-Cola" is so nearly alike that the ordinary person couldn't tell the difference readily at a glance. These

(Deposition of George Alfred Harbour.)

Atlanta people have got "Coca-Cola" down so fine I believe they would know it in the dark. I don't know about the people out of Atlanta because I have never had any dealings with them at all. I have never traveled much further than Decatur. I don't know that we ever bought any root beer outside of Atlanta, and I don't think I ever drank any until I came here, or that I ever saw any before then. I used sarsaparilla before I came to Atlanta. I lived in North Rome and the great thing out there was bottled drinks, and, of course, they had sarsaparilla like all other drinks in bottles at that time. The [425] *The* color of sarsaparilla at that time was a dark muddy looking color, That was too long ago for me to remember very much about it, I never paid very much attention to the color at all—I don't suppose it made very much difference to me then. Occasionally I see a poster advertising other drinks similar to "Coca-Cola" around in various places. I know that I have noticed them in going down to the "Coca-Cola Company at times—I go down there to pay my bills and I noticed right across the street from them they have a sign "Arrow-Cola,"—I believe I have noticed that up on the building. I have never seen the drink. I don't remember ever seeing any other barrels painted just the color of "Coca-Cola" kegs. Oh, yes, I have seen the Standard Oil Company's barrels; most of them are painted blue, I believe. I have never seen any of them painted red that I know of. No, I haven't observed barrels very much and I am not a great drinker, so barrel stuff never did appeal to me

(Deposition of I. L. James.)

very much. I never did notice the barrels very much, Standard Oil or other beverages. No, I don't know the Standard Oil beverage.

Deposition of I. L. James, for Plaintiff.

I. L. JAMES.

Direct Examination by Mr. HIRSCH.

I am in the drug business at 247 West Peachtree Street and 141 Peachtree St. I have lived in Atlanta, I guess, about 10 or 12 years. Yes, sir; I have soda-water stands in my drug-stores. Some of the drinks we dispense at our stand are: "Coca-Cola," lemon-lime-lithia, lemon and lime, cherry phosphate, ice-cream soda. "Coca-Cola" is made in Atlanta by the Coca-Cola Company. Yes, sir; that is the drink advertised extensively all over the country and in Atlanta. I guess I have known this drink "Coca-Cola" about 17 years. Oh, yes; I observe customers coming in calling for drinks. I have heard them come in and ask for "Coca-Cola" by asking for "dope" and "koke" and different things. When they ask for "dope" and "koke" I give them "Coca-Cola.' Yes, sir, I understand "dope" and "koke" to be a nickname for "Coca-Cola." I am familiar with the barrels and kegs that "Coca-Cola" is shipped in. Their color is red. No, if I should order "Coca-Cola" and a white barrel should be shipped to my place I [426] would not think it was "Coca-Cola." No, if I should order a "Coca-Cola" at a soda-fountain and they should give me a yellow drink I would not think it was "Coca-Cola."

(Deposition of I. L. James.)

Why, I guess I have heard the names "koke" and "dope" as nicknames for "Coca-Cola" about five or six years, perhaps.

Cross-examination by Mr. LITTLETON.

No, sir; I have never handled any other cola or caffeine containing beverage except "Coca-Cola." No, sir, if I were to see a drink of a golden yellow served at a soda-fountain I would not think it was root beer, nor would I think it was sarsaparilla. I would not know what it was. I might presume it to be ginger-ale—that is about the only real light golden colored drink that I know of that is dispensed. I presume I have seen the delivery wagon of Hagan & Budd going around in Atlanta, but I can't say that I have seen any barrels on it, if I have I don't remember. You ask what other drinks are on the market that are similar to "Coca-Cola" in color; well, root beer resembles "Coca-Cola," foams a little more, and sarsaparilla—of course, sarsaparilla and root beer are similar. I believe that is about all. I don't know that I have ever seen "Ko-Nut," "Afri-Cola," or "Ala-Cola." If I ever did I didn't know it. The first person who saw me about being a witness in this case was some gentleman who came and asked me would I come up and give my testimony. Magnus L. Ramey is his name. I have been in the drug business nearly 17 years. Yes, sir, I have made root beer myself. Why, we colored it with burnt sugar—caramel—if we colored it at all. Yes, sir; that material has been in universal use for coloring beverages, and we have used it to color vanilla flavoring. Well,

(Deposition of I. L. James.)

I don't know what is the difference in color between a glass of root beer or sarsaparilla as served at a soda-fountain and a glass of "Coca-Cola." "Coca-Cola" might be a shade lighter, I don't know. Yes, sir, it is very hard to tell the difference. No, I don't think the ordinary customer coming in, if he saw a glass of one and a glass of the other setting on the counter, could tell the difference between them. **[427]**

Redirect Examination by Mr. HIRSCH.

No, sir, I could not sell either root beer or sarsaparilla for "Coca-Cola."

Recross-examination by Mr. LITTLETON.

No, sir, I don't think I could sell "Ko-Nut" or "Ala-Cola" successfully for "Coca-Cola" because it doesn't taste the same, it isn't the same flavor and it hasn't the same palatability. You ask if I could sell "Koke" for "Coca-Cola"; I don't know what "Koke" is—I shouldn't think so—well, I really couldn't tell. If a man asks for "dope" why we give him "Coca-Cola." Well, I don't know whether we could serve the drink known as "Dope" for "Coca-Cola" or not.

Redirect Examination by Mr. HIRSCH.

I can't say that I have ever heard of the drink "Dope" as an individual drink; I have just heard them come in and say give me a "dope." In times gone by I have had the same thing about "koke"—I never had anything like the calls for "koke," though, that I have had for "dope." I can't say that

(Deposition of I. L. James.)

I have ever seen a drink advertised under the name of "Koke" or "Dope." When a man asks for "koke" or "dope" I understand he means "Coca-Cola."

Re-recross-examination by Mr. LITTLETON.

No, sir; I have never seen either the word "Dope" or the word "Koke" applied to any receptacles, packages, advertising, literature or in any other way, written or printed, or affixed to, or connected with this "Coca-Cola" product, or any of it's containers or advertising.

Deposition of Alexander Cruickshank, for Plaintiff.

ALEXANDER CRUICKSHANK.

Direct Examination by Mr. ROGERS.

I am in the cigar and soda-water business in Atlanta, Ga. I have five stores, the principal of which is located at 141 Peachtree St. I dispense soft drinks at only four of them. I have been in business 14 years, but have only been in the soda-water business for eleven years. We sell a general line of soda-water drinks. Yes, sir, we dispense "Coca-Cola." The Coca-Cola Company, of Atlanta, is the maker of "Coca-Cola." Yes, sir; I have seen "Coca-Cola" advertising. [428] The conspicuous feature of it is the trademark. By that I mean the script, yes, sir, and the name "Coca-Cola." I have known "Coca-Cola" ever since I have been in Atlanta, about 17 years. Yes, sir, I am around the fountains in my various stores, and have been, and hear people asking for drinks myself. Yes, sir; I have heard them ask

(Deposition of Alexander Cruickshank.)
for "Coca-Cola." They use a number of nicknames in asking for it. "Dope" is the principal one, I think. Yes, sir; I heard the word "koke." When a man asks for "koke" and "dope" I understand that he wants "Coca-Cola." Yes, sir; I regard the names "koke" and "dope" as familiarly used nicknames for "Coca-Cola." No, sir, when I dispense "Coca-Cola" in response to requests for "dope" and "koke" I have never had a purchaser say that wasn't what he wanted. Oh, I couldn't tell you positively how long these nicknames have been used; to my certain knowledge they have been used at least eight years. They are very commonly used to the extent, I should judge, that sixty per cent of the people that drink "Coca-Cola" call it by a nickname of some kind or other—"Candler's cocktail." "brick from the Candler building," "Candler's highball," "dope," and "koke." No, sir; I have never had any doubt about what they mean when they use such expressions, and the dispensers haven't. I get my "Coca-Cola" syrup in red kegs. I can mighty near tell a "Coca-Cola" keg when I see it. I can sight one on the wagon; I know it is "Coca-Cola." The thing about a "Coca-Cola" keg that indicates to me that it is a "Coca-Cola" keg, is the color of the keg.

Cross-examination by Mr. LITTLETON.

You ask if a fellow should come up to a soda-fountain and ask for something he wanted by means of a slang phrase which I hadn't heard before, if I wouldn't think he wanted "Coca-Cola"; well, I don't know about that. If he would come in and say

(Deposition of Alexander Cruickshank.)

"give me a brick in the Candler building" I would serve him a "Coca-Cola." If he would say "give me a high-fly" I don't know that I would serve him a "Coco-Cola." I have never heard it called a "high-fly." If he asked for "Candler's Highball" I would give him "Coca-Cola." No, if he would just say "give me a drink" I would not serve him a "Coca-Cola." I would ask him what [429] he wanted. The other drinks we serve at our fountain are lemon and lime, vanilla soda, lemon soda, grape juice, phosphates of various kinds, orange-ade, chocolate, root beer, etc. We do not dispense sarsaparilla. Yes, "Moxie" is a soda-fountain beverage, but not in this part of the world. That is sold up East. I remember getting a drink in Central Park in New York at one time, and it made me sick, and I have never wanted any more since then.

Deposition of Charles Kingsbury, for Plaintiff.

CHARLES KINGSBURY.

Direct Examination by Mr. HIRSCH.

I reside in Atlanta, Ga., where I have lived practically all of my life—31 years. I am in the cigar and soda-water business in the Granite Building, in which business I have been engaged since 1908—six years. We handle every kind of soda-water, ice-cream sodas, lemon, lime, lithia, buttermilk and sweet milk, and all such drinks as that, including "Coca-Cola." "Coca-Cola" is manufactured in Atlanta by Asa G. Candler—The Coca-Cola Company. Yes, sir, that is the drink so extensively advertised. Yes, sir,

(Deposition of Charles Kingsbury.)

my place of business is so I can keep a constant lookout on my place of business—behind the fountain a good deal myself. "Dope" is the principal name that is used in calls at my fount for drinks, and "Candler's highball" and "give me a brick in the Candler building"—all that kind of stuff. When people come into my place of business and call for "dope" and "koke," I understand them to mean "Coca-Cola." Ever since I have been in business they have been calling it by that way—about six years. I do not order "Coca-Cola" direct from the Coca-Cola Company; it comes from the Liquid Carbonic Company. Yes, sir; I see the "Coca-Cola" that comes to my place of business. It comes in ten-gallon red kegs. The way I distinguish a "Coca-Cola" keg is that it has a great big name on the end of it—"Coco-Cola." No, I don't know that I could distinguish it any other way, or that I could distinguish it by it's color—only that I just know it when I see it. The reason why I know it when I see it is because it has "Coca-Cola" on it. "Q. 23. You know it when you see it by the color it has"? "A. By the color; yes, sir." **[430]** "Q. 24. That is one of the ways?" "A. Yes, sir, that is one of the ways that I know it, and the name, another way." If I should see in front of a soda-water stand a whole lot of barrels and kegs of red color, the first thing that would flash through my mind would be that it was "Coca-Cola." Yes, sir; that would be so whether I saw the label or not, because they have been putting it out in red kegs ever since I have been getting it from them. If I

(Deposition of Charles Kingsbury.)

should go to a stand and call for "Coca-Cola" and a bright golden drink should be served to me I would not think it was "Coca-Cola." "Q. 29. Is that the way you distinguish it, by the color?" "A. Yes, sir."

Cross-examination by Mr. LITTLETON.

You ask if I know any other soda-fountain drinks of the same color as "Coca-Cola"; why "Coca-Cola" looks something like the color of root beer, I suppose, and sarsaparilla. I have never seen any "Moxie" or birch beer. "Grapeine" or "Brew." You say that if there is another drink about the same color, then "Coca-Cola" is not distinguished by its color; well, only "Coca-Cola" has got that color to it. Root beer and sarsaparilla are the only other drinks that I have ever seen that have that color—I have never seen a drink that has got that color. No, sir, I have never handled any "Ko-Nut" or "Afri-Cola" from any fountain. I have seen "Ko-Nut"—I used to drink it at the ball park when I couldn't get "Coca-Cola," years ago. The color of "Ko-Nut" is something like the color of "Coca-Cola." No, sir, it does not taste like "Coca-Cola," in my opinion; it has a similar appearance to "Coca-Cola"—I didn't think about that at the time you asked me about these other drinks—and has a taste that sort of resembles it, taste's just like a substitute. Yes, sir, it is pretty close to "Coca-Cola," but I think I could distinguish it. Oh, I don't know, "Ko-Nut" and "Coca-Nola" used to have wagons going around town, but I haven't noticed them lately. I don't know whether they send

(Deposition of Charles Kingsbury.)

their stuff around in barrels and kegs or not; I haven't noticed any; I haven't handled it. No, if I saw a drink sold at a soda-fountain that was a light golden color I would not think it was root beer. I think root beer is more of a black color,—looks something [431] like "Coca-Cola,"—I would not call it golden. If a light-colored drink like that was served to me I would not think it was sarsaparilla. I don't know what I would think a drink that was served to me of a light golden color was. I suppose gingerale is a light golden color,—that's the only one I can recollect at this time.

Deposition of F. H. Smith, for Plaintiff.

F. H. SMITH.

Direct Examination by Mr. ROGERS.

I am in the soda-water business at 18 E. Alabama St., and am the proprietor of the Smith Soda Water Company, Atlanta, Ga. I have been in the soda-water business three years and 31 days. We dispense "Coca-Cola" at our soda-fountain. I don't know how long I have known "Coca-Cola,"—it has been a long time ago, ten or twelve or fourteen years. Why, they tell me Mr. Candler makes "Coca-Cola." I get mine down here at the Coca-Cola Company. Yes, sir, by "Coca-Cola" I mean the product that is so extensively advertised. Oh, yes, sir, I am about the soda-fountain myself and hear people ask for the drinks they want, and serve them myself, and I have been doing that since 1907. Oh, yes, when people mean "Coca-Cola" they use nicknames and

(Deposition of Charles Kingsbury.)

slang terms, such as "dope" and "koke" and "Candler's whiskey," and "Candler's Highballs"—I don't know, most anything you can think of. When they ask for "dope" or "koke" I understand that they mean "Coca-Cola," and that is what I serve them. Half of the people in Atlanta will ask for "Coca-Cola" by the name of "dope"—"give me a dope," half of them will say, instead of "Coca-Cola." Yes, sir, I recognize the words "dope" and "koke" as commonly used nicknames for "Coca-Cola." Before I was a soda dispenser I was a "possum hunter. Oh, yes, I drank "Coca-Cola" then. I used to ask for it as "dope" and "koke"—everything else—it has been known as "dope" ever since I have known "Coca-Cola."

"Q. 22. And by 'dope,' a request for 'dope,' is understood to be a perfectly definite request for 'Coca-Cola,' isn't it?"—"A. It is, yes, sir; that's right." (This form of examination is objected to by defendants because decidedly leading, and the questions and answers are objected to for the same reason. Objection overruled. Exception.) **[432]**

Yes, sir; when people come in to my store and ask for "koke" or "dope" I serve them "Coca-Cola," and I have never had any of them object and say that that wasn't what they wanted. In my early days when I was a 'possum hunter, if I went into a store and asked for "koke" or "dope" and was served with something that wasn't "Coca-Cola," I knew I was not getting what I had asked for, but I took it because I couldn't get anything else. Oh, yes, I

(Deposition of Charles Kingsbury.)

considered I had something else substituted—"Rye-Ola" was frequently sold for "Coca-Cola,"—but when I asked for "dope" I meant "Coca-Cola."

Cross-examination by Mr. LITTLETON.

I mean by saying I was a possum hunter that I was a farmer and the biggest thing I done when I was a farmer was 'possum hunting—I was raised right on the edge of a big swamp and I lived in it most of the time.

Deposition of W. R. Millicon, for Plaintiff.

W. R. MILLICON.

Direct Examination by Mr. HIRSCH.

I am a soda-fountain dispenser at the Sterling Soda Water Company, Empire Building, Atlanta, and I have got a place of my own at 111 West Mitchell St. Yes, sir; I sell soda-water, most any kind of soda-water drinks, lemon, lime, cherry phosphate, root beer, etc. "Coca-Cola" is manufactured in Atlanta by the Coca-Cola Co. Yes, sir; that is the drink that is advertised generally around, that I refer to as "Coca-Cola." I have known "Coca-Cola" about ten or twelve years I reckon.

Cross-examination by Mr. LITTLETON.

I said I have been in the soda-water business about ten years.

Deposition of Dr. J. D. T. Lawrence, for Plaintiff.

Dr. J. D. T. LAWRENCE.

Direct Examination by Mr. HIRSCH.

My place of business is in the Equitable Bldg., 49

(Deposition of Dr. J. D. T. Lawrence.)

N. Pryor St., Atlanta, Ga., where I have a soda-fountain. The soda-fountain has been there for nearly ten years. **[433]** I had a partner with me originally. I have been there myself one year the first of August. I have been serving soft drinks to the public ever since I have been in business there, which is in the neighborhood of ten years. Yes, sir; we dispense "Coca-Cola." Mr. Candler makes "Coca-Cola,"—I believe they call it the Coca-Cola Company. I try to look after the soda-fountain since I run it myself. Yes, sir; sometimes I hear people come in and ask for drinks and hear what they say. Well, yes, sir; I hear them ask for "Coca-Cola." Yes, sir; they use other terms when they mean "Coca-Cola." "Dope," I think, is the biggest word they use. When a man asks for "dope" I give him "Coca-Cola"; I haven't got anything else to give him. I have never had a man reject it on the ground that it wasn't what he asked for. Well, I couldn't tell you how long "dope" has been a nickname for "Coca-Cola." Seems to me I have heard it ever since I have been selling "Coca-Cola"—six or seven years, anyhow. Yes, sir; when a man asks for "dope" at my soda-fountain I understand he means "Coca-Cola." Yes, sir; I regard the word "dope" as a nickname for "Coca-Cola."

Cross-examination by Mr. LITTLETON.

I say I would not have anything else, I never had anything else that was made for "Coca-Cola." No, sir, I have never seen any advertising in Atlanta advertising a drink under the name of "Dope." No,

(Deposition of Dr. J. D. T. Lawrence.)

I don't know why people call this drink "dope." No, I don't think I have ever heard anybody express his opinion on it or explain why—just a sort of nickname I always looked upon it, a man drinking a "Coca-Cola," they suppose it is something like coffee, I expect, and just call it "dope." "Dope" ordinarily would mean some sort of narcotic—sort of like cocaine, something on that order, that would be the real impression it would give you, you know.

Redirect Examination by Mr. ROGERS.

I don't know that I have ever heard the expression "dope sheet" in connection with horse racing, although I lived down in New Orleans about eight years. **[434]** Yes, sir; I have heard "the dope on the ball game"; yes, sir; that means information in that connection. Well, I say, my being a druggist, the idea associated in my mind by the word "dope" would be a habit-forming thing, and it's like a man who would take morphine, they would call it "dope," —that's the idea, a "dope fiend." Oh, no, I never had any such idea as that, as applied to a soda-water drink, but that's the impression given me, being a druggist. Yes, sir; I think they have gotten to look at it as a slang term or nickname for "Coca-Cola," because, at first, they might have had the impression that it was a dope drink, but with me it is nothing more than a nickname for "Coca-Cola."

Recross-examination by Mr. LITTLETON.

Yes, sir; I have run across people who thought "Coca-Cola" had cocaine in it.

Deposition of Dr. F. F. Langenfeldt, for Plaintiff.

DR. F. F. LANGENFELDT.

Direct Examination by Mr. ROGERS.

I am manager of Palmer's drug-store, 385 Peachtree St., Atlanta, Ga., which operates a soda-fountain. We have operated this fountain ever since we have had a drug-store there, which is about eight years. Yes, sir; we sell and dispense "Coca-Cola" at the fountain and have been doing so ever since I have been there, nearly eight years. The "Coca-Cola" people here in Atlanta make "Coca-Cola." Yes, sir; I am at the fountain myself sometimes. People sometimes ask for "dope" and "Coca-Cola." I have occasionally heard them ask for "koke," very seldom though. When they ask for "koke" or "dope" I give them "Coca-Cola." Yes, sir; that is what I understand they mean by those expressions. I have known the name "dope" as a nickname for "Coca-Cola" ever since I have been in Atlanta,—for eight years I have heard people ask for it that way. Yes, sir; I am familiar with "Coca-Cola" barrels; they are all painted red. I think I could distinguish a "Coca-Cola" barrel when I see it. I haven't the slightest idea why people use this name "dope." No, I don't know what they use it for,—it's a nickname, just like everything else. **[435]** I couldn't tell you what it means; I know when a person is tired and they have a tendency to take "Coca-Cola" it makes them feel a little better. I have never heard of "Coca-Cola" drinkers or cus-

tomers who thought "Coca-Cola" had cocaine in it. In fact I never heard them express themselves that way.

Deposition of David G. Wise, for Plaintiff.

DAVID G. WISE.

Direct Examination by Mr. HIRSCH.

I reside in Atlanta, Georgia, where I have been living regularly for five years. I travelled out of here twelve years. I am in the retail drug business and have two stores, Adams-Wise Drug Company, 449 Peachtree Street and Gunter-Watkins Drug Company, 42 Peachtree Street, both of which have soda-fountains. I am fairly familiar with the drinks sold at the soda-fountains, which are lemon-lime-lithia, chocolate milk, malted milk, egg malted milk, grape juice, "Coca-Cola," orange phosphate, etc. "Coca-Cola" is manufactured in Atlanta by the Coca-Cola Company, I think, is the name of it. Yes, sir; that is the drink that is advertised extensively. Yes, sir; there are nicknames used for "Coca-Cola" at my soda-fountain—they often come in and ask for "dope" and "koke" and I guess that't all. When a person comes in and asks for "dope" and "koke" I understand they want "Coca-Cola." I have known the names "dope" and "koke" ever since I have been in the drug business here. Yes, sir; as applied to "Coca-Cola." Yes, I notice the containers "Coca-Cola" is in when I order it sent to me. We get it in ten gallon red kegs with "Coca-Cola" on the end—paper pasted on the end—I am putting out return kegs to-day and I noticed it—25 kegs. If I should

(Deposition of David G. Wise.)

walk down in front of a soda-water stand and see a number of kegs painted red I would think he was going to have a big soda day and going to get some money—I got $14.00 to-day on return kegs,—its big soda day when you return those kegs. If I were to order "Coca-Cola" and it came to me in a barrel painted white instead of red my porter would likely call my attention to it and say "Doctor, this ain't right, something wrong about this."

Cross-examination by Mr. LITTLETON.

Yes, sir; I know why the name "dope" is used—I surmise, **[436]** I don't know, but I presume it was given it because of the medicinal effect, or the talk way back when it was first manufactured,—some medicinal effect in it. I don't know whether or not that was due to the impression, at some time or other, that it had cocaine in it. I never heard that spoken of so much as caffeine—the laity, I doubt if they know the difference in effect of cocaine and caffeine. In these days, though, they have learned a good deal about cocaine, but in those days I doubt if they knew very much about it, so I wouldn't say if it was one thing or the other. If I saw a lot of white barrels or white kegs, or if a number of white barrels or white kegs were delivered to my place of business, I wouldn't have any idea at all what was in them. If I ever saw any white barrels or kegs it didn't make any impression on me. No, I do not know this product manufactured in Atlanta known as "Ko-Nut" and have never seen any of it. Yes, sir, I have seen "Afri-Cola." Why, I don't know how long I

(Deposition of David G. Wise.)

have known it, five or six years, I think. It was brought to me and offered for sale. It looked like "Coca-Cola." I don't recollect what it tasted like for the reason that I had had so many samples submitted like that—it tasted, of course, to a certain extent, like "Coca-Cola" but not exactly like "Coca-Cola," there is a similarity. No, I have never handled any drink similar to "Coca-Cola" since I have been in business—no other so-called cola beverage or caffeine containing beverage. Oh, yes, I have been quite a good steady customer of the Coca-Cola Company all the time—very much so—we get a very nice rebate at the end of the year.

Deposition of W. R. Stovall, for Plaintiff.

W. R. STOVALL.

Direct Examination by Mr. ROGERS.

I am the proprietor of a soda and cigar-store at 47 North Broad Street, Empire Building, Atlanta, Ga., in which business I have been engaged for two and a half years. Prior to that for four years, I was in a general store business and four years before that I was in a wholesale grocery business. Yes, sir; I have a soda-fountain in my store and am about the store so I can and do hear people when they come in and ask for drinks. I hear them quite frequently—in fact, take all the telephone orders. **[437]** Yes, sir, I dispense "Coca-Cola." The Coca-Cola Company is the maker of "Coca-Cola." Yes, sir; I have seen "Coca-Cola" advertising. You ask what is the thing that strikes me about the ad-

(Deposition of W. R. Stovall.)

vertising, what is the principal feature of advertising; well, there is a specific style, I don't know as I could describe the specific style, but there is a specific style, and the color is red. Yes, and has the word "Coca-Cola" on it. It is written in a peculiar style as I said just now; in other words, it is distinct from anything else that I have ever seen. Well, when people come into my store and ask for soft drinks they hardly ever call for "Coca-Cola"—I don't suppose that ten per cent of them ask for "Coca-Cola"—they ask for "dope." Yes, sir, when a man asks for "dope" I understand him to mean "Coca-Cola." Well, yes, sir, "dope" is a commonly used nickname for "Coca-Cola" in Atlanta, I should say, I have never been in any other place. (Defendants enter a broad, general, sweeping exception, to go through the record without having to repeat it so much, to all this testimony as to nicknames, because it is irrelevant and not warranted by the pleadings. Overruled. Exception.)

Deposition of Charles Alexiou, for Plaintiff.

CHARLES ALEXIOU.

Direct Examination by Mr. HIRSCH.

I reside at the corner of Luckie and Broad Streets in Atlanta. I have lived here thirteen years. I am in the soda-fountain and cigar business and attend the soda-fountain myself. Yes, sir, I dispense drinks most of the time. The main ones we sell is lemon-lime-lithia, and "Coca-Cola" and cherry phosphate, pineapple syrup and vanilla. Yes, sir,

(Deposition of Charles Alexiou.)

that drink "Coca-Cola" is manufactured here in Atlanta by Asa Candler. The name of his company is the Coca-Cola Company. That is the drink I see advertised around—I guess so. Yes, sir, I know it is. At my soda-fountain they call for "Coca-Cola" under other names—sometimes say "give me 'dope'." By that I understand they want "Coca-Cola," that's the way I understand it, and sometime I ask them myself, I am sorter soda-jerker. I have two gentlemen come along, one say "give me 'Coco-Cola,'" one say "give me 'dope' and lime"; and so for fun I give one "dope" and the other one "Coca-Cola" [438] and he say "No, I want 'Coca-Cola,'" and the other one, just like.

Cross-examination by Mr. LITTLETON.

I am a Greek. No, I am not liable for military service here. Yes, sir; I also sell root beer and sarsparilla from my fountain.

Deposition of J. F. Redding, for Plaintiff.

J. F. REDDING.

Direct Examination by Mr. HIRSCH.

I reside at 231 Stewart Avenue, Atlanta, Ga. I guess I have resided in Atlanta about eight years. I am in the drug business. As to my particular duty, why I just perform duties all over the store—prescription department, patent medicines and soda-fountain, all around. I have been in this business nearly two years for myself; before that time I was working for Cox's Pharmacy, East Point, and Kimball's Pharmacy, Boulevard and Edgewood, Atlanta.

(Deposition of J. F. Redding.)

A few of the drinks dispensed at the soda-fountains where I have worked are "Coca-Cola," lemon-lime, lemon sodas, etc. "Coca-Cola" is manufactured in Atlanta by the Coca-Cola Company. Yes, sir; that is the drink that is advertised so extensively. Yes, sir; that is the drink I understand when "Coca-Cola" is referred to. Yes, sir, "Coca-Cola" is asked for at my fount by other names, such as "Asa G." and "shot" and "dope" and "koke," and those names, and several others. When a man comes into my fountain and asks for "dope" and "koke," "Coca-Cola" is what I give him. Yes, sir, I understand that that applies to "Coca-Cola." Those names have been in use ever since I have been dispensing drinks. When I order "Coca-Cola" it is sent to my place of business in kegs painted red. If I should see in front of a soda-fountain a lot of red kegs, what would flash through my mind would be that they were "Coca-Cola."

Cross-examination by Mr. LITTLETON.

Yes, sir, I am a customer now of the Coco-Cola Co. When I order "Coca-Cola" from the Coca-Cola Company I order "Coca-Cola." No, sir, I don't order "koke" or "dope." No, sir, I have never seen the words "Dope" or "Koke" in any "Coca-Cola" advertising nor have I ever seen those words affixed to any packages or containers containing "Coca-Cola." **[439]** No, sir; I have never handled any beverage similar to "Coca-Cola" other than "Coca-Cola." Yes, sir; I have heard that the "Coca-Cola Company is sending out men to

(Deposition of J. F. Redding.)

the different fountains to test and see if they are all handling "Coca-Cola"—they never came into my place and I am not positive that they do. Yes, I am the owner of that store. Why, no sir, I don't know as I do know of any similar beverage to "Coca-Cola" that is being sold in Atlanta. I know they have tried to sell them but I couldn't say they are on the market because I don't handle them. Probably they are, but I don't know that. Yes, sir, I have seen red barrels other than "Coca-Cola" barrels. I don't recollect where I have seen them, but I have seen red barrels, though. I don't remember what was in those barrels.

Deposition of Charles B. Giardina, for Plaintiff.

CHARLES B. GIARDINA.

Direct Examination by Mr. ROGERS.

My business is soda-fountain and cigars, 77 South Pryor St., Atlanta. It is known as the Bell Cigar and Sodawater Company. I have been in this business over two years, in Atlanta. Most of the soft drinks we dispense at our soda-fountain is "Coca-Cola" Mr. Candler makes "Coca-Cola" so far as I know—the Coca-Cola Company. Yes, sir, I am around the front myself so that I can hear people when they come and ask for drinks, I spend most of the time there during the day, I dispense it more than any other man I have got in the house. When people mean "Coca-Cola" they call "dope" and sometimes "koke" in calling for it at my store. When a man calls for "koke" or "dope" I under-

(Deposition of Charles B. Giardina.)

stand that he wants "Coca-Cola," I don't handle any other drinks similar to "Coca-Cola." No, sir, I have never had anybody say that ain't what he wanted when I furnished "Coca-Cola" in response to such a request. I can swear to that because the trade I have got is, you might say, a regular trade, like this building—go down stairs and get drinks—that's the reason I say this; have very few transient trade, and some people say sometimes "give me a 'Coca-Cola' and they drink three and four times a day, sometimes twice a day and then next time they come in and say 'well, give me a 'dope' "—you see? It's just that way. **[440]** Yes, sir, I understand when they say "give me a 'dope,' " they mean "Coca-Cola."

Cross-examination by Mr. LITTLETON.

I know these same people, they ask for "dope" they want "Coca-Cola," because they ask me "give me 'Coca-Cola' sometimes," they just say—comes right out of the mouth—"give me a 'dope' " just that way, and next time they might say "give me a 'Coca-Cola' "—same thing, I know, because they get the same thing. Of course, I know pretty much what they want any way, whether they ask for it or not. But, of course, sometimes they change, they take lemon and lime and chocolate milk, but when they want "Coca-Cola" and "dope" they want the same thing all the time—"Coca-Cola." No, sir; if they came and told me "give me a 'shot' " I wouldn't give them a shot, I ain't got no gun to shoot with. No, sir, I never heard anybody saying "give me a 'shot'." If they come in and ask me to give them

(Deposition of Charles B. Giardina.)

"A Candler Highball' I would give them "Coca-Cola" because they express it, to give them a "Candler" drink. If they come in and ask me to give them a "glass of 'coffin varnish'," I haven't got it. I ain't got any "embalming fluid" either. If they asked for that I couldn't give them anything, I don't know what I would give them. Yes, sir; I have been in business here in Atlanta a little over two years right under the eyes, as it were, of the Coca-Cola Company. I sell more "Coca-Cola" than anything else in the drink line. Of course, I sell as many as fifty to sixty in one tray at dinner times, of course, I don't care for Mr. Candler or anybody else, but I tell that which is true, that's all.

Deposition of W. A. Medlock, for Plaintiff.

W. A. MEDLOCK.

Direct Examination by Mr. ROGERS.

I guess you might call me a druggist,—my main store is located at 27 Gordon Street. I have three stores altogether in Atlanta, at each of which I operate soda-fountains. We dispense all the common calls at our soda-fountain, including "Coca-Cola." The "Coca-Cola" Company of Atlanta, Ga., is the maker of "Coca-Cola." I don't know how long I have known "Coca-Cola," I have known it almost since it came out. **[441]** Well, I guess I have been drinking "Coca-Cola"—I think I can safely say, for fifteen years. Yes, sir; I am around the fountains in my various stores so that I can hear the people ask for drinks and hear the names they use to designate

(Deposition of W. A. Medlock.)

the thing they want. Yes, sir; I hear calls for "Coca-Cola." You ask if people ever use nicknames when they mean "Coca-Cola"; well, they come in and call for "Morning's Morning" or "dope," about the only nicknames I know of. When a man asks for a "morning's morning or a "dope" I understand that to mean "Coca-Cola." I do not furnish anything else in response to such requests, because I don't handle anything like "Coca-Cola." No, I have never heard anybody say that "Coca-Cola" wasn't what they meant when they asked for "dope." "Q. 22. Do you regard the word 'dope' as a familiarly used and common nickname for "Coca-Cola' "? "A. Yes, sir." I buy my "Coca-Cola" syrup in kegs which are a dark red color, I guess you would call it. I should think I could distinguish a "Coca-Cola" keg readily by its peculiar color.

Cross-examination by Mr. LITTLETON.

You ask what is peculiar about that color; well, it's the only color that we have had like it, that I know of, I don't know any other barrel that is painted that color. No, I have never seen any Standard Oil barrels painted that color; most of their barrels, I think, are blue. You ask if I have ever seen any kegs or barrels in which the other cola beverages on the market are shipped in; we don't handle any other kind, I can't say that I would know that, we don't handle any substitutes for "Coca-Cola" of any kind, and I don't know that I would. Of course, if there was another keg that was painted

(Deposition of W. A. Medlock.)

that color and brought out, marked "Coca-Cola" and had something else in it, I wouldn't be able to tell you that was not "Coca-Cola," if it was painted like "Coca-Cola"; but if it had a different color, or different in appearance, I would become suspicious. I have lived in Atlanta since my last coming, 3½ years ago. I am a regular customer of the Coca-Cola Company. **[442]**

Deposition of Linton Stephens, for Plaintiff.

LINTON STEPHENS.

Direct Examination by Mr. HIRSCH.

I reside at 59 Walker Street, Atlanta, Ga. We have lived here in Atlanta about 22 years, I suppose. I am a soda dispenser and cigar clerk, and have been for about 10 years all told. I have dispensed "Coca-Cola," lemon-lime-lithia, chocolate milk, cherry phosphate and all soda-fountain drinks. The drink "Coca-Cola" is made in Atlanta by the Coca-Cola Company. Yes, sir; that is the drink so extensively advertised. Yes, sir; I have gone out of Atlanta and "Coca-Cola" is advertised all over. I have known the drink "Coca-Cola" about 15 years, I suppose. You ask what names are used in calls at the fountain besides "Coca-Cola"; well, not any as I know of. Some call for "Coca-Cola" and to make it short they call for "dope." I believe that is all I heard. I have only known the name "dope" as applied to "Coca-Cola" just a few years. When they ask for "dope" they ask for "Coca-Cola," they don't ask for any other drink at all. They don't say

(Deposition of Linton Stephens.)

"Coca-Cola" because it is too long, they call for "dope." Yes, sir; it is just a nickname for "Coca-Cola." Yes, sir, I have had occasion to notice the kind of barrels and kegs "Coca-Cola" is received in. I notice they are all red. No, sir; I have never seen "Coca-Cola" in any other kind of barrels, or kegs, except red barrels.

Cross-examination by Mr. LITTLETON.

Well, I have an idea why people and customers use the word "dope," they don't want to call it "Coca-Cola" because it is too long, possibly thats one reason they call it "dope"—because that's been the nickname for it for several years—they call it "dope" and when they call for "dope" they don't want anything but "Coca-Cola." I couldn't exactly explain what the word "dope" means, generally. I never have heard it used in any other connection. Oh, yes; I have heard about the "dope on the base-ball game." Yes, sir; I have heard of "dope fiends," as applied to cocaine fiends. That "dope fiend" is applied to a cocaine fiend, but that's not including "Coca-Cola" in it though, because cocaine [443] is a drug, and "Coca-Cola" is a "Coca-Cola"—is a drink. I couldn't exactly tell you whether "Coca-Cola" is made out of drugs. No, sir, I have never seen anybody who thought that it had cocaine in it. No, sir, I didn't ask them one way or the other. I have heard a whole lot of remarks about it, but I never heard of any remark of any one that it had cocaine in it at all. It is a sort of hard proposition to tell you right now, just what remarks I have

(Deposition of Linton Stephens.)

heard about it. I have never heard anything of "Coca-Cola" containing cocaine at all—I have sold "Coca-Cola" eight or ten years and I have never heard any customer of mine make any remark of its containing cocaine or any other injurious ingredients in it—not by a single customer. I have been dispensing "Coca-Cola" in this town for about ten or twelve years, off and on. No, sir, I nave never handled anything else but "Coca-Cola" at my fountain. I have handled all the other drinks but only one "Coca-Cola." The other drinks I refer to are such drinks as lemon and lime, lemon-lime-lithia, chocolate milk and all other such fountain drinks of that kind. I have seen several drinks on the market similar to "Coca-Cola"—"Ko-Nut," "Afri-Cola," "Kola-Ade." "Ko-Nut" looks like something similar to "Coca-Cola' and root beer, I don't know that I have ever tasted it. I think I have seen the "Ko-Nut" wagon going around town delivering it. I can't say that I have seen that wagon delivering barrels and kegs because I never saw these people delivering it in barrels and kegs—all I seen was in bottles. No, sir, I don't believe I have ever seen the soda-fountain beverage "Ko-Nut." No, sir, I wouldn't know it if I saw it. Yes, sir, I have seen "Afri-Cola"—it was a bottle beverage. I don't know whether they dispense that at soda-fountains or not, because I never did handle anything but "Coca-Cola" at soda-fountains where I worked. No, sir, I never have seen any such beverages besides these

(Deposition of Linton Stephens.)

two. I have lived here in Atlanta about twenty years and have never had any trouble with the Coca-Cola Company.

Deposition of George Moore, for Plaintiff.

GEORGE MOORE.

Direct Examination by Mr. ROGERS.

I live in Atlanta and by business is manufacturing icecream, **[444]** candy, jobber of "Coca-Cola" and anything of that kind, soda water and supplies and a retail place, too, in which I have a soda-fountain. Why, sure we dispense "Coca-Cola" at our fountain. I guess the Coca-Cola Company in Atlanta makes "Coca-Cola." Yes, sir; I am about the fountain myself, I used to work for ten or twelve years, I don't work now, but I do sometimes in the morning. Yes, sir; I am around the fountain so I can hear people ask for drinks—I am always in the morning, except sometimes when I go out. Sure, I get telephone calls for drinks and send them out. Yes, sir; I know the names people use when they mean to call for "Coca-Cola." All of my customers —I say all of them because I know them all and I have been there eighteen years at that corner, and I know them all—when they want "Coca-Cola" they call "give me a 'dope.'" Sometimes they ask for "Koke" or "caffeine" and "Candler's Highball," they mean "Coca-Cola" just the same, thats what they want—just a nickname they have for it—and even myself, I am ashamed to say it, myself the boss —when I want sometimes a drink, I say "give me a

(Deposition of George Moore.)

'dope' " I just got the habit of it, I hate to say it, but I do it a good many times. Oh, I have known the word "dope" as a nickname for "Coca-Cola" a long time, since 16 or 18 years ago, almost since I have been at that corner. "Q. 17. Do you recognize the word 'dope' as a nickname for 'Coca-Cola'?" "A. Why, yes, sir." "Q. 18. Do your customers?" "A. The customers do." They don't mean nothing but a "Coca-Cola" for a nickname for "Coca-Cola," they call it "dope."

Cross-examination by Mr. LITTLETON.

I am a Greek. Sometimes one person calls at my place for "caffeine" and one or two persons "Candler's Highball" and about seventy-five or eighty per cent call for "dope." It got so in the last couple of years pretty nearly eighty to ninety per cent called "dope" instead of "Coca-Cola"—you might say ninety per cent.

Deposition of Pete Verge, for Plaintiff.

PETE VERGE.

Direct Examination by Mr. HIRSCH.

I live at 71 West Mitchell Street, Atlanta, Georgia. **[445]** I have lived in Atlanta about 14 years. My business is cigars and soda water. Yes, I am frequently behind the soda-fountain. Besides the ice-cream sodas and lemon-limes—we sell "Coca-Cola," cherry smash, a little bit. I knew the drink "Coca-Cola" since I came from Europe, 14 years ago, when I came to the city of Atlanta. It is manufactured in Atlanta by the Coca-Cola Company. Yes, sir; that

(Deposition of Pete Verge.)

is the drink that is so extensively advertised around. You ask what names are used at my fountain in making "Coca-Cola"; we have "Coca-Cola" signs, you know, but people call different names, you know—call it "dope"—of course, when they say "dope" we know they want "Coca-Cola," you know. Well, sometimes the boys call it "Candler's highball," but not as much as they do "dope" in my place. They say "dope" seventy-five times and "Coca-Cola" twenty-five times. I understand the word "dope" to mean "Coca-Cola." No, I never hear the expression "koke,"—just "dope," you know. "Coca-Cola" is sent to me in ten gallon red kegs.

Cross-examination by Mr. LITTLETON.

I have never heard any other cola or caffeine containing beverage asked for at the soda-fountain, except "Nova-Cola"—they used to have that sometime ago, or "Arrow-Cola," I haven't got it now, though. Yes, sir, I handled that, but the "Nova-Cola" went out of business. No, sir, people didn't ask for that by the name "dope,"—they say, "Nova-Cola." No, I never heard anybody ask for that by the name of "dope." "Arrow-Cola," too, used to sell at one time, you know,— very little, though, one call every 15 days. We sell five gallons of "Coca-Cola" every day. When the Coca-Cola Company found out I was handling "Nova-Cola" they never said a thing, you know, we was handling "Coca-Cola," too, you know. Oh, yes, I was handling "Coca-Cola" at the same time, like icecream soda and everything else—yes, sir, like I was handling "Nova-Cola," like I have

(Deposition of Pete Verge.)

cherry smash now, too, you know. No, sir, "Nova-Cola" was not a similar drink to "Coca-Cola." A man drinks "Coca-Cola," knows what it is at that time; at that time if "Nova-Cola"—I don't know a thing about it. There used to be a Nova-Cola Company that made "Nova Cola" located on Mitchell Street, across to my place. [446] They used to be in Rome, Ga., and I think they are there now, if I am not mistaken. The color of it was the "Coca-Cola" color, pretty near it, you know. It taste a little sort like sweet—never was like "Coca-Cola." No, it did not taste like "Coca-Cola," no, it looked like "Coca-Cola," of course, the color. You ask what that one of the cola beverages, well, I guess so, it was "Nova-Cola," I guess was some cola about it. No, sir, "Nova-Cola" tasted nothing like "Coca-Cola." I was born at Athens, Greece,—I am a Greek.

Deposition of W. N. Tumlin, for Plaintiff.

W. N. TUMLIN.

Direct Examination by Mr. ROGERS.

I live in Atlanta, Ga. My place of business is in the Healey Building. I operate a soda-fountain in Atlanta and have been doing so for about ten years. I am around the fountain about fifteen hours a day and hear people when they come in and ask for drinks and know the names they use. They use "dope" mostly. When a man asks for "dope" I understand he means "Coca-Cola" and that is what I furnish him. I have never had it rejected on the ground that it was not what the purchaser meant.

(Deposition of W. N. Tumlin.)

They use various names such as "dope" or "koke" or "Candler's Highball." I understand them all to mean the same thing—"Coca-Cola." "Q. 13. State whether or not from your experience the word 'dope,' 'Koke,' and 'Candler's Highball' are familiar nicknames for 'Coca-Cola' so used by the public and understood by the trade." "A. It is." (Objected to by defendants because the question is leading and suggestive. Overruled. Exception.) "Coca-Cola" is manufactured by the Coca-Cola Company, I believe is the name of it, in Atlanta. Well, the word "dope" as a nickname for "Coca-Cola" came into prevalent use about seven or eight years ago. I suppose seventy-five per cent of my trade would designate "Coca-Cola" by some nickname. About sixty per cent of that seventy-five per cent would be "dope," some "koke" and some "Candler's Highball." I get my "Coca-Cola" syrup in barrels and kegs. You ask what there is about the barrel, if anything, that enables me to identify it; well, its coloring, which is red. No, I have never seen any "Coca-Cola' barrels that weren't red. If I should be waking down the street and should see a block away, say, in front of some place where [447] there was a soda-fountain, a pile of red kegs, I would think from that that it was "Coca-Cola." Yes, sir; that would be true even if I were far enough away that I couldn't see the label on the keg. It has a distinct color that you have seen so much you would know it without stopping to think about it.

(Deposition of W. N. Tumlin.)

Direct Examination by Mr. LITTLETON.

No, sir; I have never seen the words "Dope" or "Koke" used or employed by the Coca-Cola Company in any of its lables, tags, advertising or anything of that sort.

Deposition of W. A. Hartman, for Plaintiff.

W. T. HARTMAN.

Direct Examination by Mr. HIRSCH.

I live at 173 Ashby Street, Atlanta. I have lived in Atlanta about 23 years. I am in the cigar and soda water business and have a soda-fountain, from which we dispense lemon-lime-lithia, "Coca-Cola," chocolate milk, buttermilk—all drinks that are usually sold at a fount. I should say I have known "Coca-Cola" 15 or 16 years, something like that, possibly longer, I don't know, just exactly. It is manufactured in Atlanta by Mr. Candler,—the company is the Coca-Cola Company. Yes, sir, that is the drink named "Coca-Cola" that is advertised around the towns I have been in. You ask what names are used in designating "Coca-Cola" at the fountains I have been to, besides "Coca-Cola"; well, its called "dope"—I get orders over the telephone, "send me a 'dope' and lime" or "a 'dope' and orange." I have occasionally heard the name "koke" used, but not very much, not as much as I have "dope." I understand the names "dope" and "koke" to mean and apply to "Coca-Cola" and "Coca-Cola" is what I serve in response to such requests. "Coca-Cola" is delivered to our place of

(Deposition of W. A. Hartman.)

business in ten gallon kegs which are painted red. You ask how I could distinguish a keg of "Coca-Cola" by its appearance; I could distinguish it by the color of it. No, sir, I have never seen it in anything else except red kegs or barrels. If I should see a line of red kegs or barrels in front of a soda-fountain what would flash immediately in my mind would be that they are "Coca-Cola" kegs. [448]

Cross-examination by Mr. LITTLETON.

I have been in the soda-water business about five years. No, sir; I have never seen the word "Dope" or "Koke" used or employed by the Coca-Cola Company in any advertising, literature, or affixed to any containers containing "Coca-Cola."

(It is stipulated and agreed between Counsel that the Coca-Cola Company has never attached the name "Dope" or "Koke" to anything containing "Coca-Cola" and has never authorized the use of the name "Dope" or "Koke.")

Deposition of T. C. Marshall, for Plaintiff.

T. C. MARSHALL.

Direct Examination by Mr. HIRSCH.

I live at the Chesterfield, 15 West Harris St., Atlanta. I have lived in Atlanta 31 years. I am a druggist and I have worked in drug-stores for 19 years, which stores have all had fountains in them. The drinks that were dispensed from those fountains were soda water, ice-cream soda, chocolate milk, hot chocolate, "Coca-Cola," etc. This drink, "Coca-Cola" is manufactured in Atlanta by the

(Deposition of T. C. Marshall.)

Coca-Cola Co. I have known the drink "Coca-Cola" twenty-odd years. Yes, sir; that is the drink that is advertised extensively here and elsewhere. The other names that are used at the fountains, that I am acquainted with, in calling for "Coca-Cola" are "Coca-Cola," "dope," "koke," and "shot in the arm." I have known "dope" ever since I have been serving it. "Koke," though, hasn't been used but about the last ten years to much extent. I understand the names "koke" and "dope" to mean "Coca-Cola," and that is what I serve when those names are asked for. You ask if I know any other drink of a similar kind or character to "Coca-Cola" that is on the market or that was on the market, before these terms, "koke" and "dope" were used; well, way back yonder the old Wine of Coca Company—when I first started to sell soda water, they were here then, that is the only one I remember. Yes, sir; the old Wine of Coca, that was here when I first started serving drinks. "Q. 19. The terms "dope" and "koke" apply exclusively to "Coca-Cola" do they not? "A. Yes, sir." (Objected to by defendants because leading. Overruled. Exception.) **[449]** Yes, sir; I see the kegs come in when I order "Coca-Cola." They are colored red. No, sir; I have never seen "Coca-Cola" in any other kind of a keg.

Cross-examination by Mr. LITTLETON.

Yes, sir; we have handled other beverages besides "Coca-Cola"—other beverages similar to that—we tried a lot of those. A lot of these companies that

(Deposition of T. C. Marshall.)

spring up go around and leave you a dispensing bottle, but we have never sold any, it never did go. They used to come in and break, you know, probably last a year or two and you never heard of them again. Yes, sir; I have heard other beverages similar to "Coca-Cola" asked for at soda-fountains. Just as I say, like two or three of them here, you have them come in and ask for them but we never did sell them at all. Somebody down here on Edgewood Avenue got up a drink—I have forgotten the name now,—"Coca-Nola." Yes, sir; I have seen the Hagan & Dodd's delivery wagon going around town—the "Ko-Nut" and "Afri-Cola" people. No, sir; I have not seen them delivering their barrels at soda-fountains; generally, when their wagon came out our way, they would have just bottled stuff on it. That is the only stuff I have seen on the wagon besides "Red Rock," lemon and lime and such stuff. Yes, sir; I have handled sarsaparilla and root-beer at my fountain all the time I have been in business. No, sir; that is not practically the same color as "Coca-Cola." It is a good deal darker. Yes, sir; I could readily distinguish between the two—they are served at the soda-fountain differently—well, it is served in a different size glass. Yes, sir; you could tell it even if it were served in the same size glass, if you draw it full and not put all that foam in it, you could tell the difference. I sell Hires' Root-Beer. You ask what kind of sarsaparilla I sell; well, when you call for sarsaparilla we use Hires' Root-Beer—yes, sir;

(Deposition of T. C. Marshall.)
just like "dope" means "Coca-Cola"; if they come in and say "give me sarsaparilla" we give them Hires' Root-Beer. **[450]**

Deposition of J. B. Pendergrast, for Plaintiff.

J. B. PENDERGRAST.

Direct Examination by Mr. ROGERS.

I am a druggist. My store is located at 154 Mooreland Ave., Atlanta, Ga. I have been in the drug business either working for someone else or as proprietor for twelve years. Yes, sir; I have dispensed "Coca-Cola" all that time. The "Coca-Cola Company makes "Coca-Cola—Candler, I suppose. Yes, sir; by "Coca-Cola" I mean this drink that is so extensively advertised. Yes, sir; I am familiar with the advertising. Yes, sir; I am around the fountain myself so that I hear people come in and ask for drinks; I have worked at the fountain some myself. No, that has not been true all the time I have been in business, but it has been, though, for the last six years. You ask if I know the names people use when they mean "Coca-Cola"; well, the one we get most is "dope." When a man asks for "dope" at my soda-fountain I understand that he means "Coca-Cola" and always furnish "Coca-Cola" on such calls. No, sir; I have never had any one to turn it back and say it was not what was wanted. Yes, sir; I have heard the word "koke" as a nickname for "Coca-Cola" but not recently; it was several years back they used that a good deal. It meant, as applied to a soft drink, "Coca-Cola."

(Deposition of J. B. Pendergrast.)

Well, as far as I remember I have heard the nickname "dope" as a nickname for "Coca-Cola" at least ten years. All that time we considered it a nickname for "Coca-Cola." "Q. 22. You consider that as a definite request for 'Coca-Cola'?" "A. Yes, sir; we get it—we get calls for 'Candler's Highball,' 'Candler's "dope," 'but I think, though, half of them call for 'dope' meaning 'Coca-Cola.'" We get "Coca-Cola" syrup at our store in ten gallon red kegs. No, I have never seen a "Coca-Cola" keg that wasn't red. If I saw a cart-load of kegs going down the street, some red and some white, I would naturally think of "Coca-Cola," being a red keg.

Cross-examination by Mr. LITTLETON.

I am 28 years old. Well, we have tested a number of beverages similar to "Coca-Cola"; we have had samples brought to us and tasted them, things of that kind, never served any of them, though. **[451]** Yes, sir; we have been an exclusive customer of the Coca-Cola Company during the time we have been in business. Some of the nicknames I have heard "Coca-Cola" called by are, "Candler's 'dope'" and "Candler's cocktail," "a shot," "morning's morning," "eye-opener," and "brick in the Candler building," "help out Candler a little," "put another brick in his building." In all these instances we served "Coca-Cola." No, sir; we have no other similar beverage in our fountain but "Coca-Cola." No, sir; we haven't any other so-called Cola or caffeine-containing beverage in our fountain.

(Deposition of J. B. Pendergrast.)

Redirect Examination by Mr. ROGERS.

Yes, sir; irrespective of what I may have at my fountain I consider these various expressions, "koke," "dope," "Candler Highball," "brick in the Candler building" as definite designations of "Coca-Cola." They are all expecting "Coca-Cola"; that is what they all want; we never have any comment of any kind on it; they were always expecting "Coca-Cola"; that is our understanding of it. If I were to meet a friend on the street and he would say to me "Let's go into this soda-fountain and have a 'dope,'" I would understand that he was talking about "Coca-Cola,"—that he was asking me to have a "Coca-Cola" with him.

Recross-examination by Mr. LITTLETON.

No, sir; I have never seen the word "Dope" or "Koke" used or employed by the Coca-Cola Company in any advertising, literature, or affixed to any packages or containers containing "Coca-Cola."

Deposition of Thomas Myer Murphy, for Plaintiff.

THOMAS MYER MURPHY.

Direct Examination by Mr. HIRSCH.

I am 19 years of age, reside at 25 Evans Drive, Fort McPherson, Atlanta, Ga. I have been living in Atlanta about eight years, altogether. I go to school at the University of Georgia, where I have been a student for one year. Prior to that time I was working for the law firm of Candler, Thomson & Hirsch. I started [452] with them September 5, 1908, and worked with them ever since, up to

(Deposition of Thomas Myer Murphy.)

the time I left to go to the University, which was sometime in the middle of September, 1913. At the present time I am working for the Coca-Cola Company in the capacity of special representative, and as such receive a salary from the Coca-Cola Company. I do not receive any reward for any reports I might make or services I might render, other than my salary. As such special representative I have visited on behalf of the Coca-Cola Company the following towns: Summerset, Lexington, Louisville, Bowling Green, Owensboro, in the State of Kentucky; Helena Little Rock, Texarkana, Camden, Pine Bluff, Brinkley, Newport, Walnut Ridge and Pocahontas, in the State of Arkansas; Poplar Bluff, Sykeston and Cape Girardo, in the State of Missouri. These are all the towns I visited. The places of business I visited in the towns referred to are as follows: In Summerset, Ky., I visited Kelsey Drug Co. and the Palace of Sweets. In Lexington, Ky., I visited C. A. Johns Drug Store, Smith's Drug Store, Jones Drug Company, McAdams and Morford, druggists, Thompson Drug Company, Lexington Drug Company and Wm. Stagg, druggist. In Louisville, Ky., I visited Burnmeyers Bros. Inter-Southern Catering Company, one of the stores of T. P. Taylor & Company, druggist, the Newman Drug Company, J. B. Baird, druggist, one of the stores of H. O. Hurley, druggist, and Kline & Sons, Confectionery. In Bowling Green, Ky., I visited Gallis Bros. and J. E. Tyler, druggist. In Owensboro, Ky., I visited the Wellman Drug Company,

(Deposition of Thomas Myer Murphy.)

Public Drug Company and Readman's Pharmacy. In Helena, Ark., I visited Myers Drug Company, Palace Drug Company and the Govan-King Drug Co. In Little Rock, Ark., I visited Snodgrass-Bray Drug Co., Reads-Stahl Drug Co., State Drug Co., Pittman Drug Co., Perin's Drug Co. In Texarana, Ark., I visited the Evanson Drug Co. and the Boyd Drug Co. In Camden, Ark., I visited Arthur Levy, druggist, and Morgan Drug Co. In Pine Bluff, Ark., I visited Seals Pharmacy, Rosenberg's Pharmacy, and Bedell's Pharmacy. In Brinkley, Ark., I visited the Dutton Drug Co., W. K. Sims Drug Co. In Newport, Ark., I visited the Bevans Drug Company and the Walker Drug Co. In Walnut Ridge, Ark., I visited Moses Cooper's place and Bob Cooper's place. In Pocahontas, **[453]** Ark., I visited Brinkley Drug Co., Layman Drug Co. In Poplar Bluff, Mo., I visited Patton & Farr Pharmacy and Gliddens Candy Kitchen. In Sykeston, Mo., I visited J. A. Poindexter, and Dorris Drug Store. In Cape Girardo, Mo., I visited the St. Charles Pharmacy, Dalton Drug Co., and A. B. Miller's Confectionary and Drug Store. Of the towns I went to only the last three I visited were selected for me to go to; namely, Poplar Bluff, Sykeston & Cape Girardo, Mo. I received instructions from the office of Candler, Thomson & Hirsch to go to these towns. No, sir; nobody selected for me the places I should go to in those towns. I was told to go wherever I pleased and I did so. There were no restrictions whatever put upon me as to the places I should

(Deposition of Thomas Myer Murphy.)

go into. When I would go into a place on my first visit I usually called for "Coca-Cola" and noted the container from which the syrup to make the drink was drawn, and noted whether or not any customers entered and called for "Coca-Cola," "dope," or "koke." On my second visit I called for a "dope," or "koke" and noted the container from which the syrup to make that drink was drawn, and noted whether or not that syrup was drawn from the same container as the syrup to make the drink on my previous call for "Coca-Cola." The next thing I would do would be to interview the proprietor of the place. I would state to the proprietor that I had had occasion to visit his store and had called for "dope," "koke," and "Coca-Cola" and had noticed during my stay at his store other calls for "dope," "koke" and "Coca-Cola" and noticed that the syrup to make those had been drawn from the same container, and then asked him what his opinion was as to the meaning of the words "dope" and "koke" when applied to a soda-fountain beverage. In some of the places I made what is called a consumers' test. In making this test I would have the proprietor instruct the dispensers on duty to ask customers who came in and called for "dope" or "koke," as to whether or not they meant "Coca-Cola" and I would take up a position in close vicinity to the fountain where I could hear all the requests of the customers for "dope," "koke," and "Coca-Cola," and where I could hear the dispensers' questions to the customers and their replies **[454]** and I would record the

(Deposition of Thomas Myer Murphy.)

calls and the replies of the customers. Everyone whom I interviewed told me it was his understanding that the words "koke" and "dope," as applied to a soda-fountain beverage, meant "Coca-Cola" and only "Coca-Cola." I noticed that the syrup to make the drink "Coca-Cola," "dope," and "koke," both on my calls and the calls of customers, were drawn from the same container, regardless of the name of the drink called for. Each and every customer who replied to the dispenser's question stated that he meant "Coca-Cola" when he called for "dope" or "koke." In each place where I made a consumers' test the same method as that detailed above was carried on, with the result I have already stated. Yes, sir; in every town I visited I saw extensive advertising of a product advertised under the name of "Coca-Cola." In those advertisements the name "Coca-Cola" was prominently displayed, in the same style of script as is shown in Plaintiff's Exhibit #95. In the course of my visits to the towns mentioned, in no instance and in no way, shape or form, did I see any drink advertised under the name of "Dope" or "Koke." I visited in all, 17 towns. I interviewed, in all 122 proprietors, managers, or dispensers. I made 26 consumers' tests in which there were 519 calls for "Coca-Cola," 98 calls for "dope" and 302 calls for "koke." In these consumers' tests, I heard the questions of the dispensers and the replies of the customers thereto in every instance. Yes, sir; in these consumers' tests in every instance, "Coca-Cola," "dope" and "koke" were all

(Deposition of Thomas Myer Murphy.)

taken from the same container. Yes, sir; all the replies made to the dispenser, in asking what they meant by "koke" and "dope," were the same. In each town I went into I made a consumers' test, and sometimes more, and in every place I interviewed either the manager or the proprietor. I always obtained the statement that the opinion of the manager or proprietor was that the meaning of the words "dope" and "koke," as applied to a soda-fountain beverage, was always "Coca-Cola" and meant "Coca-Cola." Yes, sir; I noted how the containers were marked in each instance. In Summerset, Ky., at the Kelsey Drug Company, all the containers were unlabeled, as were all the containers in the Palace of Sweets. **[455]** In Lexington, Ky., at the store of C. A. Johns, druggist, at the Jones Drug Company and at Wm. Stagg, druggist, the container was labeled "Coca-Cola." At the store of June Smith, druggist, and at McAdams & Morford Drug Store all the containers of the fountain were unlabeled. At the Thompson Drug Company the containers were labeled "pineapple" and at the Lexington Drug Company the label on the container used was worn off. In Louisville, Ky., at Burnmeyers Bros., druggists, the container was labeled "pineapple." At T. P. Taylor & Company's store, it was labeled "banana." At the Inter-Southern Drug Company and at the New Port Drug Co., none of the containers in the fountain was labeled. At H. O. Hurley's store, the container was either unlabeled or the label wasn't visible—it was a bottle container and

setting down in a hole. At Kline & Sons, Confectionery, and at the J. B. Baird Drug Company, the container used was labeled "Coca-Cola." At Bowling Green, Ky., at Gallis Bros., druggists, the container was labeled "Coca-Cola," while at the store of J. E. Tyler, druggist there was no label on the particular container used. At Owensboro, Ky., at the Weldman Drug Company, the container was labeled "tonic." At the Public Drug Company it was labeled "Coca-Cola" and at Reedman's Pharmacy it bore no label. At Helena, Ark., at the Myers Drug Company and the Palace Drug Company the container was labeled "Coca-Cola"; at the Govan-King Drug Company the container was unlabeled. In Little Rock, Ark., at Reads-Stahl Drug Company, the container was labeled "ginger." At the City Pharmacy it was labeled "pineapple," and at the Snodgrass-Bray Drug Company, the Pittman Drug Company, Perin's Drug Company, the container bore no label. In Texarkana, Ark., at the Evanson Drug Company and the Boyd Drug Company the container was unlabeled; in Camden, Ark., at the store of Arthur Levy, druggist, and at the Morgan Drug Company, the container bore no label. In Pine Bluff, Ark., at Seals Pharmacy, Rosenberg's Pharmacy, the container contained no label. In Brinkley, Ark., at the Dutton Drug Company, and the store of W. K. Sims Drug Company, the container was labeled "Coca-Cola." In Newport, Ark., at the Bevans Drug Co., the container bore no label,

(Deposition of Thomas Myer Murphy.)

while at the Walker Drug Company, it was labeled "Coca-Cola." **[456]**

In Walnut Ridge, Ark., at Moses Copper's place the container used was labeled "Coca-Cola" while at Bob Cooper's place it bore no label. In Pocahontas, Ark., at the Brinkley Drug Company the container used bore no label, while at the Layman Drug Company it was labeled "Coca-Cola." In Poplar Bluff, Mo., at the store of Patton & Farr, at the Gliddens Candy Kitchen and at the Paris Candy Kitchen, the container bore no label. In Sykeston, at the store of J. A. Poindexter, the container was labeled "Coca-Cola," while at the Derris Drug Company the container used was labeled "chocolate." In Cape Girardo, Mo., at the St. Charles Pharmacy, the container used was labeled "cherry," while at the Dalton Drug Company and at E. B. Miller's it was labeled "Coca-Cola." I did not see any container labeled "Dope" or "Koke" while I was away.

I had a conversation with Mr. J. F. Callis, of Callis Brothers, at Bowling Green, Ky.; I asked Mr. Callis whether or not he had been approached the representatives of the Koke Company, and he stated that a Koke salesman had attempted to induce him to substitute the product "Koke" when Coca-Cola was called for by a nickname, saying that the syrups were just exactly the same and that no difference could be distinguished by the consumer. (Objected to as hearsay and gossip.)

Mr. Callis states that he replied that such an action would constitute robbing the Coca-Cola Com-

pany and that he refused to do that.

I had a conversation with Mr. Vinson of the Vinson Drug Company, Texarkana, Ark., Dr. Vinson stated that the representative of the Koke Company asked him how his trade called for Coca-Cola—whether or not it was by its full name or by the names "Koke" and "Dope"; Dr. Vinson stated that he replied that the majority of his customers called for Coca-Cola by nicknames, "Koke" and "Dope," and the agent then stated, "Then I have a product here you can serve them when Coca-Cola is called for by those names, and further no one will ever be able to distinguish any difference between this product and Coca-Cola."

Dr. Arthur Levy, a druggist at Camden, Ark., stated that he was approached by an agent of the Koke Company and that this agent told him [457] that if he could distinguish any difference between the product of that Koke Company and Coca-Cola that he, the agent, would make Dr. Levy a present of his company's product and Dr. Levy refused this proposition, said that he was afraid of losing his Coca-Cola trade, saying that even if he couldn't distinguish any difference—he didn't make the test—there was a possibility of his trade being able to distinguish a difference and he would lose the trade he had built up by an honest policy.

While I was making the Consumers' Tests, at Rosenburg's Pharmacy, at Pine Bluff, Ark., a customer entered and said, "Give me a Coca-Cola made in Atlanta, Ga.," and don't try to push any of that

(Deposition of Thomas Myer Murphy.)

damned 'Koke' stuff off on me." And the dispenser then told him he had not been serving "Koke" for a number of months and the customer then stated "If I had known that, I would have been your customer for a number of months; I was a customer of yours a number of months, and you started to pushing that 'Koke' stuff off on me, and I just quit you." Mr. Burton, the soda manager, stated to me that they had had the syrup of the Koke Company in their fountain because of the fact that Dr. Rosenburg was a stockholder in the company and was of course anxious to push the product of that company, and he said that he substituted that product for Coca-Cola, and said he lost so much of his Coca-Cola trade that he found it to his best interest to discontinue the substitution. He said the method used in the substitution was that a customer would come in and call for Coca-Cola, the dispenser would repeat after him "Koke?" and the customer would say "Yes"; and the dispenser then served him the product of the Koke Company.

I had a conversation with W. K. Soms, a confectioner at Brinkley, Ark. Mr. Soms stated that he was approached a couple of years ago by the representative of the Koke Company but does not remember the conversation, except in so far as the agent of the Koke Company tried to induce him to substitute the product of the Koke Company for Coca-Cola, and Mr. Soms further stated that he had received a number of letters from the Koke Company but didn't pay enough attention to them to remember the contents. **[458]**

(Deposition of Thomas Myer Murphy.)

I had a conversation with Dr. Moses Cooper, Walnut Ridge, Ark., Dr. Cooper stated that he was some time ago approached by a representative of the Koke Company and that this representative urged him to sell the product of the Koke Company when "dope" or "koke" was called for, stating that his company, The Koke Company, had as much right to the use of the words "koke" and "dope" as had the Coca-Cola Company.

Mr. Edward Angelo, of the Paris Candy Kitchen, Poplar Bluff, Mo., stated that he was approached some time ago by a representative of this Koke Company, and this representative urged him to sell the product of the Koke Company when the public called for Coca-Cola by the names "koke" and "dope" saying that Mr. Angelo could do that and be within his rights.

Based upon my calling for the product under the name "dope" and "koke," in my opinion the words "dope" and "koke" mean "Coca-Cola" as applied to a soft drink or carbonated beverage, and apply to "Coca-Cola," and, from the consumers' tests I have enumerated, the words "dope" and "koke" mean, and are applied to, "Coca-Cola." "Q. 92. I will ask you if what you have stated is true with the trade and with the consumer?" "A. That is the fact, that 'dope' and "koke"—those names—are applied to 'Coca-Cola,' in so far as I have been able to find it, does." The basis for this opinion is the experience I have just enumerated. "Q. 94. Is that based upon the experience you have had, the names

(Deposition of Thomas Myer Murphy.)

'dope' and "koke" are applied exclusively to 'Coca-Cola'?" "A. To 'Coca-Cola' only."

Cross-examination by Mr. LITTLETON.

I started with Candler, Thomson & Hirsch, September 5, 1908. They are the general counsel for the Coca-Cola Company. I obtained the money from Candler, Thomson & Hirsch to attend the University of Georgia but this is to be refunded when I leave school. I have been heretofore a clerk in the office of Candler, Thomson & Hirsch. I am employed now as special representative in this special work by the Coca-Cola Company. **[459]** I received my check signed by Harold Hirsch, agent, for the expenses of this trip I took to get up this evidence—the money came from the Coca-Cola Co. No, sir, they did not limit my expense account. I feel pretty kindly towards the Coca-Cola Company in so far as they are clients of Candler, Thomson & Hirsch. No, I have nothing against Judge Candler and I feel kindly towards Mr. Hirsch. Why, no, I do not necessarily look on any other concern that is manufacturing a drink similar to "Coca-Cola" as substituters, unless it substituted for "Coca-Cola" and it has a dishonest practice concerned in it. Yes, I have heard some of these other concerns referred to as substituting concerns. Well, I have no first hand knowledge as to how many concerns there are making drinks similar to "Coca-Cola," but what knowledge I have was gotten at a picture show at Camden, Ark. I saw an advertisement stating that there were 156. In so far as I now remember, I have

(Deposition of Thomas Myer Murphy.)

never seen the words "dope" or "koke" in any of the Coca-Cola Company's advertising, or circulars, or affixed to any of its kegs, jugs or containers, in my travels about the country. In so far as I know these words "koke" and "dope" have never been used or employed by the Coca-Cola Co.

Redirect Examination by Mr. HIRSCH.

Yes, sir, I feel that the individual members of the firm of Candler, Thomson & Hirsch are my benefactors, and are aiding me in this life. Yes, sir, I would do anything in my power that was honest to aid them in their interest. I receive a check every month for $25.00 up at the University of Georgia, which I apply to my living expenses. Yes, sir, Harold Hirsch has aided me individually in getting credit for my clothes.

Deposition of Earl Kinbrough, for Plaintiff.

EARL KINBROUGH.

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Ga., and am soda-water dispenser for Tumlin Bros. I have been a soda-water dispenser for something in the neighborhood of ten years. We dispense at our fountain all the ordinary soda-fountain drinks. "Coca-Cola" is manufactured in Atlanta by Asa G. Candler. The name of his company is the Coca-Cola Company. Yes, sir; that is the drink that is advertised so extensively, it is advertised all [460] over the country. I couldn't say exactly how long I have known "Coca-Cola"—ever since it has been in existence—I

(Deposition of Earl Kinbrough.)

couldn't say for how long—over ten years. Besides, "Coca-Cola," the most frequent name that is used at my fountain in calling for it is "dope." "Koke" is also used. When a person comes to my fountain and asks for a "dope" or "koke" I understand him to mean, and I sell, "Coca-Cola." Yes, sir, I have seen "Coca-Cola" delivered from the Coca-Cola Company to my place of business. It comes in ten gallon kegs painted red. (There was no cross-examination of this witness.)

Deposition of John Mehos, for Plaintiff.

JOHN MEHOS.

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Ga., where I have lived for the last seven years. I am in the cigar, soda-fountain and restaurant business. Yes, sir, I attend the soda-fountain myself. "Coca-Cola" is the main drink sold at my soda-fountain. It is manufactured in Atlanta by old man Asa Candler. The name of his company is the Coca-Cola Co. That drink is the biggest advertised in the United States, after the American Tobacco Co.'s products. I have known it for seven years, since I came south. You ask if any names are used at my soda-fountain besides "Coca-Cola" in calling for "Coca-Cola"; lots of people have nicknames—they come in and say "give me a 'Coca-Cola,' " or "give me a 'dope,' " you know. All of them mean "Coca-Cola," you know. Yes, sir, I understand when a person comes to my soda-foun-

(Deposition of John Mehos.)

tain and asks for "dope" that he means "Coca-Cola."

Cross-examination by Mr. LITTLETON.

I believe all they ask for is "Coca-Cola," "dope" and "koke." I don't recollect any other names. You ask if I have handled anything else besides "Coca-Cola" of that same color, since I have been in business in Atlanta; root beer, you know, and sarsaparilla are drinks of that color, but then I have got nothing to do—it's a different drink altogether. Different taste, makes different foam. Oh, no, I have never had any other drink of a taste and color similar to "Coca-Cola."

Deposition of Clyde Park, for Plaintiff.

CLYDE PARK. [461]

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Ga., and am with Tom Pitts' Cigar and Soda Company, at the soda-fountain. I have been engaged in this line of work for about eight years in Atlanta. At our fountain we dispense most anything—"Coca-Cola," lemon and lime, chocolate milk, root beer, ginger-ale. Yes, sir, "Coca-Cola" is a soft drink dispensed at our fountain. It is made in Atlanta by the Coca-Cola Co. Yes, sir; that is the drink that is advertised around town extensively. I have known of it 12 or 15 years. Yes, sir, there are other names used at our fountain in calls for "Coca-Cola" aside from the word "Coca-Cola,"—"dope" and "koke," that is about all, I think. "Q. 14. Do you understand, if a person

(Deposition of Clyde Park.)

comes to your fount and asks for a drink under the name 'dope' or 'koke' that they want 'Coca-Cola?'" "A. Yes, sir." "Q. 15. If you would call for 'dope' or 'koke' would you mean 'Coca-Cola?'" "A. I would." If I should walk down the street with a friend and he should say, "Let's go and have a 'dope' or 'koke,'" I would understand he meant "Coca-Cola." "Coca-Cola" is delivered to my place of business in red kegs. I have never seen it delivered in any other kind of kegs.

Cross-examination by Mr. LITTLETON.

I know that "Coca-Cola" is manufactured by the Coca-Cola Co. of Atlanta, Ga., because I have seen it manufactured, have seen it made in the vats. I buy it direct from the Coca-Cola Co.

Deposition of A. P. Blatsios, for Plaintiff.

A. P. BLATSIOS.

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Ga., and am in the soda business. Yes, sir, I attend to the fountain. I have been in Atlanta about eight years. I dispense from my fountain "Coca-Cola," chocolate milk, lemon-lime—the different sodas. I have known of this drink "Coca-Cola" about eight years—since I have been here. Yes, sir, that is the drink that is advertised around town here. Yes, at my soda-fountain I have "Coca-Cola" called for by other names than "Coca-Cola," such as "dope" and "Candler's booze" or "Candler Highball," and all such stuff as that. [462] When a person comes to my fountain and

(Deposition of A. P. Blatsios.)

asks for "dope" I understand that he wants "Coca-Cola."

Cross-examination by Mr. LITTLETON.

You ask if I ever hear it called for by any other names except those mentioned; well, I don't think about no more. They call it by most any kind of a name. I am a Greek.

(It is stipulated by and between counsel that Mr. C. E. Williams, Mr. Jack Weinberg, Mr. S. H. Crouch, George Poulos, John Poulos, George Prattes, Jas. Poulos, Dr. F. W. McRae, F. E. Walthour, were ready to testify, and that their testimony would be about the same as others who have testified in regard to "Coca-Cola" and the nicknames for "Coca-Cola.")

Deposition of George S. Lowndes, for Plaintiff.

GEORGE S. LOWNDES.

Direct Examination by Mr. HIRSCH.

I reside at 96 East 15th St., Atlanta, Ga. I have resided in Atlanta since January, 1869—about 45 years. Dr. J. S. Pemberton and I were always special friends,—that is, of course, after we became acquainted,—boarded at the same place for a long time—and after that my business relations with him was the purchase, with Mr. Venable, of a two-third interest, I think it was, in that "Coca-Cola" business. Yes, sir; Plaintiff's Exhibit #78 has my signature on it and is the paper that was given at the time of my purchase. It has been in my possession ever since, except when it was sent to Washington

(Deposition of George S. Lowndes.)

for record. I turned it over to you, I think, about two or three weeks ago. Yes, sir; that is my signature on Plaintiff's Exhibit #80. Yes, sir; I have had that paper also in my possession, and turned it over to you at the time I turned the others over to you. Those papers represent my purchase of the two-third's interest referred to. Of course, Plaintiff's Exhibit #79 followed the purchase, being an invoice of the stock of goods on hand, which I bought from them with this purchase there, but it followed those papers. As far as I can remember all the goods described in there were turned over and checked off. You can find the check marks on there. I have had Plaintiff's Exhibit #96 in my possession ever since the payment was made, it was a request of some money. **[463]** I turned it over to you within the last two or three weeks. The papers presented to me marked Plaintiff's Exhibits #78, 79, 80, and 96 are genuine papers and the signatures are genuine. Yes, sir, they were executed and delivered at about the date mentioned thereon. Yes, sir; Plaintiff's Exhibit #82 has my signature thereon. It is the genuine paper and the signatures are genuine. Yes, sir; I was at Venable's place of business frequently; now as to the manufacture of the whole thing: I have been in his place there where he was manufacturing "Coca-Cola," of course, I didn't go into details about it. I don't know anything about the details. I was simply financially interested—well, and naturally supposed to look after it somewhat. The reason Mr. Venable and myself

(Deposition of George S. Lowndes.)

remained together so short a while was that I found he wasn't handling it as a thing of that sort should be handled and I told him we had best separate—he buy or sell to me. That business was on the corner of Peachtree and Marietta Streets, where the Fourth National Bank now stands. After the sale, as shown by the exhibit you have just given me, to Walker & Dozier, I did not see the property, described in this bill of sale, any more. I left it to Mr. Venable to turn the property over to them—in other words I don't know whether we sold them the same property, because that might have been consumed,—that is, the stuff we purchased. But, whatever stuff we had there went with the material and stuff.

Cross-examination by Mr. LITTLETON.

At the time I speak of—at the time of my purchase and during the time I was connected with "Coca-Cola" it was not well known like it is today, of course not. No, sir, you couldn't say it was just in its infancy. Mr. Venable had been selling it for some little time and done considerable advertising. No, I do not know how many years. I don't know how long he had been selling it. I think we were getting orders from Montgomery, St. Louis and Griffin around there. Yes, I went to Pemberton's former place, 107 Marietta Street, the old Holland House, frequently. I went there frequently with Dr. Pemberton to taste the stuff he was making, but after our purchase I went there perhaps only to get this invoice—I mean to get the delivery of this [464] invoice of goods. You see Mr. Pemberton

(Deposition of George S. Lowndes.)

was sick at the time, in bed, and my recollection is that either I or Mr. Venable, or possibly both of us, had to go down there to get this stuff after he had had an invoice made of it to take it from there and haul it up to Venable's place. There was no more business done by them there after that because Pemberton was sick at that time and I don't think he ever got up again. My recollection is he never got up out of bed again. Well, the collections for the sales of "Coca-Cola," the whole matter of that sort, was in the hands of Mr. Venable, I didn't give any personal attention to the business myself. We did very little business, that's the truth, and it went into the concern to pay the expenses. Naturally, the expenses would have eaten up what little business we did, you know, because Venable was not giving it the attention he should and therefore I had the matter closed out. It was a very small business. I don't know what Mr. Candler done, it was naturally supposed that he did not exercise any sort of protectorate over this business or make the sales himself or collect the money for it. Yes, I knew something of my own business. I knew enough to know that Venable had to have help to carry it on, but Candler had no connection with Venable, he was not interested. During the time Venable and I had it Mr. Candler had no connection with it whatever. You ask if we got any tools which Dr. Pemberton had at 107 Marietta Street, except for what this invoice says; well, he had purchased some "Wine of Coca," he made several of those preparations, "Wine of Coca," and

(Deposition of George S. Lowndes.)

"Coca-Cola" and possibly "Globe Flower Cough Syrup." I presume he had material, machinery and appliances down there for making those things, but I don't know. The "Wine of Coca" was quite a different preparation from the "Coca-Cola"—had about the constituency of wine and was much thinner than "Coca-Cola." It was made out of wine, and "Coca-Cola" was a syrup. I think possibly we did use some labels on our barrels after our purchase. I think there are some labels in that bill of sale to us, if I mistake not. I don't know that I can describe those labels. I think they had a trademark of red on them—just a dash under the word "Coca-Cola." I know the word "Coca-Cola" was always printed in red. [465] Dr. Pemberton had always done so and we followed it afterwards. While we didn't have the preparations to make the scroll as it is now, we used a block letter to make that on the bill head. Yes, we used block letters—that is, we intended always to have a cut made, you know, and made in the shape that Dr. Pemberton had had it on his advertising and signs and things of that kind, but we never did get that far. You ask if the product was not known at that time as "Coca-Cola Syrup and Extract"; there was no "extract" to it as I ever heard of. You ask me to examine the contract marked Plaintiff's Exhibit #78; well, now, it might have been called "Coca-Cola Syrup and Extract." I know there is a good many extracts in it, but I don't know that the preparation itself was called "Extracts." Yes, sir; it is recited in that contract

(Deposition of George S. Lowndes.)

"Coca-Cola Syrup and Extract." Yes, sir, I remember about that, but I don't remember about the "extract" being attached to it. The fact is that the extract is very seldom ever connected with the syrup. A syrup may be made from extract, but the principal foundation of a syrup is sugar and not an extract—it has extract in it for flavoring and such things as that. We had "Lowndes & Venable" on our bill-heads, I remember—because, when I moved from our old office to the building over here I came across a batch of those letter-heads back in a drawer, and "Lowndes & Venable" are on there, as proprietors or something, I don't just remember the wording of it. Well, no; I don't know that I went down to 107 Marietta Street—the place where Pemberton was—but once, and that was on the delivery of this invoice. No, sir; Pemberton was not living there at that time—he never did—that was just his place of business. He was living either at Kirkwood or Edgewood, it was either one of those places. No, I don't think Pemberton kept up with his business at 107 Marietta Street, I don't think he ever got up from bed after that. He told me at the time he sold it, he was down in bed and was satisfied he wouldn't get up, that was his only means of living. No, sir; I don't know when he died, but it was a short time afterwards. I can't remember when it was. I had a copy of the "Coca-Cola" formula, Dr. Pemberton furnished us with a copy. No, I never did make it from [466] that formula myself. I just looked

after the financial end of it and looked to Venable to do the work of that character.

Direct Examination by Mr. HIRSCH.

One of the items on Plaintiff's Exhibit #79 is a stencil plate. It is either metal or cardboard with letters cut in it, to use a brush on to put on barrels and boxes. "RDQ. 3. Is that what you used to put the 'Coca-Cola' on boxes, barrels and kegs?" "A. I presume that was what that was used for—and for advertising purposes, also." Yes, sir; I reckon it was turned over to us in this way with the rest of the property for if it was checked off, it was there. I couldn't say that I did the checking myself, but I presume at that time it seems to have been done by somebody that received the goods.

Recross-examination by Mr. LITTLETON.

I have no recollection about that stencil plate except that it is just recited in the invoice. I know the preparation was known as "Coca-Cola," not "Coca-Cola Extract" in an advertising sense and as a soda-fountain drink. You ask if it was known as "Coca-Cola Syrup"; "Coca-Cola" was what they called it, of course, it was a syrup. You ask if it is not a fact that on the stationery that Mr. Pemberton had the name appeared thereon as "Coca-Cola Syrup"; is that bill made out on a printed head? I couldn't say about that. Well, I don't know what Mr. Pemberton did, of course. I couldn't tell whether he used the name on his letter-heads as "Coca-Cola Syrup" and called it by that name, but it is a syrup and it would be very natural for it to be

(Deposition of George S. Lowndes.)

called "Coca-Cola Syrup." At that time I was in the firm of B. M. Wooley & Company, a special proprietary medicine house which was making medicine exclusively. My recollection is that Dr. Pemberton sold the "Wine of Coca" to somebody or else moved away from his place of manufacture—I am not positive about that; it was afterwards manufactured as a separate preparation entirely from "Coca-Cola"—two distinct and separate preparations. One was a stimulant and the other was a syrup. You ask if "Coca-Cola" wasn't advertised as a good tonic medicine for headache and stimulant and if it isn't advertised today as "stimulating, refreshing" **[467]** and "invigorating"; well, invigorating, I believe, is the word they use. Yes, sir, it is stimulating—some of these preparations in it are stimulants, but the "Wine of Coca" was solely a stimulant just like a drink of whiskey. Well, whiskey is a pleasant, refreshing drink to some people—that's a question as to who drinks it. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #96.)

(The following depositions were taken by the plaintiff at Mobine, Alabama, on August 2, 1914:)

Deposition of Guy Henderson Upchurch, for Plaintiff.

GUY HENDERSON UPCHURCH.

Direct Examination by Mr. ROGERS.

I live at 200 St. Joseph St., Mobile, Ala., am a druggist and am president and manager of the Bienville Pharmacy, Inc., at Mobile, Ala. I have been

(Deposition of Guy Henderson Upchurch.)

connected with drug-stores for the past fifteen years, —for the past nine years in Mobile, and before that in Tuscaloosa and Carrollton, Ala. With the exception of about two years, I have operated a soda-fountain ever since I have been in the drug business and have operated one all the time I have been in Mobile. You ask me to name some of the drinks we dispense at our soda-fountain; well, I don't know about that, of course, we dispense "Coca-Cola" as the main thing. I couldn't say who makes "Coca-Cola," but I understand it is made by the Coca-Cola Company of Atlanta, that's where we get it from and where it is shipped to us from. Yes, sir; it is a product that has been extensively advertised. Yes, sir; I am about the fountain myself so that I can hear and notice the names used by people to designate the drinks they want, a majority of the time—sixteen hours a day. Now, I don't know that I can relate all of the nicknames for "Coca-Cola," but the two most frequent are "koke" and "dope." (Objected to by defendants because irrelevant, and not warranted by the pleadings. Overruled. Exception.)

Now, I couldn't answer, either, as to how frequently the words "koke" and "dope" are used as nicknames for "Coca-Cola" but I would say the larger per cent of the time—that is, the larger per cent of the calls come under the head of "dope" or "koke," or some nickname. When a man comes into my store and asks for a "dope" or a "koke" or says [468] "give me a 'dope,'" or "give me a

(Deposition of Guy Henderson Upchurch.)

'koke,' " I understand that he means "Coca-Cola" and supply "Coca-Cola"—those are my instructions to all the men at the fountain. No, sir; I have never known of any instances where the purchaser has rejected "Coca-Cola" saying it was not what he wanted when we served it in response to such requests for "dope" or "koke"; on the contrary I have frequently asked the question as to what they mean and invariably they state "Coca-Cola." Well, I don't know exactly how long the nicknames "koke" and "dope" have been applied to "Coca-Cola" but I expect, as I stated in my letter, nine or ten years, and I expect longer than that, but I think I can safely say nine or ten years to my own knowledge. Yes, I remember a call I had from a representative of the Southern Koke Company of New Orleans about February 20, 1914. This representative did not talk to me personally; he talked to one of the men at the fount named John Graham. Yes, sir; I was about, so that I heard part of the conversation; I was at the cigar case, about ten or fifteen feet away. I don't remember the conversation leading up to it, but the first thing I noticed, and I began to pay attention to, what he was saying, when he began to make a statement—a question, rather, of Mr. Graham at the fount, what they were serving when they had calls for "dope" or "koke." Mr. Graham replied to him, saying that they were serving "Coca-Cola." This agent then informed Mr. Graham that they had no right to do it—that they had a patent or trademark on the words "Koke" and "Dope" and that they

(Deposition of Guy Henderson Upchurch.)

had the exclusive use of it and that we had no right to serve "Coca-Cola" when "Dope" and "Koke" were called for. That was the substance of the conversation, that is all I heard at that time, I didn't pay any further attention to it. Later I received a letter from the Southern Koke Company, Ltd., of New Orleans, which is filed as Plaintiff's Exhibit #97. If that is not the letter I received, it is an exact duplication of it, it looks like the one I received, though. (Objected to by defendants unless the witness knows what it is. Overruled. Exception.) Then I will make the statement that that is the letter. Yes, sir; it is addressed to the Bienville Pharmacy. When I received this letter I immediately wrote the Coca-Cola Co., at Atlanta, as stated in the letter filed as Plaintiff's Exhibit #98. **[469]** Yes, sir. I received the sample of the Southern Koke Company's goods mentioned in the letter filed as Plaintiff's Exhibit #97. I saved it and have had it in my possession ever since it was received until Saturday, August 1st, on which date I exhibited it to you. Before delivering it to you I wrote my initials on it and sealed it up. The small jug filed as Plaintiff's Exhibit #99 is the jug received by me from the Southern Koke & Dope Company of New Orleans, as per their letter, and is the jug that I delivered to you on Saturday. The initials in the corner of the label, "G. H. U." are mine. The jug was sealed in my presence, having never been opened. When it was delivered to you it was in the exact condition as when it was received by me. (Plain-

(Deposition of Guy Henderson Upchurch.)

tiff here tendered and offered in evidence Plaintiff's Exhibits #97, #98, and #99). No, I have never had any other or further experience with any representative of the Southern Koke Company except the one to which I have testified above. I had a letter from them since that time, asking in regard to the sample that they had sent me and requesting me to give them a trial order for some of it, and I misplaced that letter. Other than that I have had no further business dealings or communications with the Southern Koke Company, Ltd., of New Orleans.

(The introduction of Plaintiff's Exhibit #98 is objected to because incompetent in that it is merely a carbon copy of a letter written by the witness to the Coca-Cola Co. Objection overruled. Exception.)

Cross-examination by Mr. LITTLETON.

No, sir; I have never handled any other beverages similar to "Coca-Cola." I have never handled any other cola beverages except "Coca-Cola." No, sir; I have never seen any other cola beverages bought or sold, but I have seen a good many of them exhibited by different representatives that called in. I have never seen any of them bought or sold on the market. Yes, sir; I know some of the names by which the people call for these other drinks because I had letters from the manufacturers telling me what they were. No, sir; I don't know what names the public use in calling for these beverages because I never had any calls for them. I don't know whether the public calls for these beverages under the names

(Deposition of Guy Henderson Upchurch.)

of "koke" or "dope," but I know my trade; you can ask them **[470]** invariably what they want and they say "Coca-Cola." "XQ. 11. Sure, but you don't handle anything but 'Coca-Cola'?" "A. No, I don't handle anything but 'Coca-Cola.'" The color of these other cola beverages which I saw was similar to "Coca-Cola"—they are similar in color to "Coca-Cola." It is pretty hard for me to recall right at the present time the different cola beverages I have seen which are similar in color to "Coca-Cola." I have seen samples of "Afri-Cola" and of "Dope" and "Koke" and I have seen samples of others which I can't recall at the present time, one was made in Birmingham, I think, that I have seen samples of, but I don't remember the name of it. I don't know whether it was "Rye-Ola" or not, I think that was the name. I have seen samples of "Wise-Ola," that is made in another place—I don't know whether that is made in Birmingham or not, but I have seen samples of it. No, sir; I have not seen any of "My-Coca," "Wine of Coca," "Lemon-Cola" or "Ala-Cola." I have not tasted any of these other beverages nor have I seen any of the receptacles or containers in which they are shipped to dealers. I don't know what kind of receptacle they are shipped in except the sample which the Southern Koke Company, Ltd., shipped to me, being Plaintiff's Exhibit #99. Why, I don't know what some of the other names are by which my customers call for these drinks. I think that states the majority of them, I don't recollect any other names. Of

(Deposition of Guy Henderson Upchurch.)

course, I know that there are others, but it is infrequent, I didn't pay much attention to them. Yes, sir; I have had people come in and ask for "Morning's Morning." I have heard of them asking for "a shot" and "a shot in the arm," but I have never had them call for it. No, sir; I have never heard them say "give me a glass of poison" at the soda-fountain; I have heard them come in at the prescription case and say that. I happen to be up here this morning to testify in this case at the request of Mr. Edward Rogers here, the attorney for the Coca-Cola Co. I wrote that letter filed as Plaintiff's Exhibit #99 to the Coca-Cola Company for my own information and protection. I mean by that that I had no money for any suits the Southern Koke & Dope Company might want to bring,—that they had a right to that name and if it was necessary for me to serve it in order to keep from substituting, that I wouldn't want to serve it. **[471]** In other words, I intended to serve what the people wanted and that is why I wrote that letter, to find out where I stood, and I really said it was my information and belief in all good intentions that when "dope" was called for that they were calling for "Coca-Cola" and I didn't believe in giving a man something else that he doesn't want. You ask if I had discussed this point with Mr. Rogers before taking the stand; yes, sir, it was conversed with us; he talked about it, he asked what I knew about it; yes, sir. No, sir; it was not he who told me that the object of my writing this letter was to be protected in the distribution

(Deposition of Guy Henderson Upchurch.)
of the stuff; all that was done of my own accord. I didn't know the gentleman at the time that letter was written. I am 34 years old and am a druggist but I have no relation with the Coca-Cola Company other than that I have been serving their stuff a number of years. That's the only relationship I have with the Coca-Cola Company. When I got the inquiry from the Southern Koke Company I thought it was my duty to communicate it to the Coca-Cola Company; it was one of their products concerned and I was the other party concerned. When I got the letter I sent the original letter to them so they could see what I was driving at. Yes, sir; when I got the sample of "Koke" I felt that I had to seal that up and preserve it for use. I sealed it up because I wanted to keep it, because I didn't know what disposition to make of it; I intended at one time to send it back to the Southern Koke Company but decided later not to do it. I sealed it at the request of this gentleman, Mr. Pierce. I don't know who he is, he is a representative of the Coca-Cola Co.—attorney. No, he was not there when I got that bottle. I had had it in my possession longer than two weeks, but I don't think it was as long as three months, before I saw him. Yes, sir; I have had it in my possession for that length of time, I only sealed it when Mr. Pierce suggested sealing it, but the cork had never been drawn before that time so that that seal was put on after we talked about it. Yes, sir; I know what I am up here for—up here to give testimony in regard to this case. I don't know whether

(Deposition of Guy Henderson Upchurch.)

you call me a witness in behalf of the Coca-Cola Company or not, I suppose you would. Yes, sir; I am up here and know that the Coca-Cola Company is ready to sue "Koke & Dope" and things of that kind. **[472]** I understand that, but that's not my motive, my motive is up here trying to find out as to whether I have the right to serve "Coca-Cola" when "dope" and "koke" are called for. I have been in touch with the Coca-Cola Company in regard to the testimony I was to give from the date of my letter—rather from the date of their letter. No, sir; all of my customers do not call for "Coca-Cola" as "dope," according to that letter—the larger per cent of them. Yes, sir; we have a few more customers than ten or twenty. Yes, sir; I know all these customers calling regularly and so far as I can ascertain when they call for "koke" or "dope" they want "Coca-Cola." I don't know what relation "Coca-Cola" has to "dope." Usually the term 'dope' means a thing like morphine, cocaine, things like that. "XQ. 77. So, when a man calls for 'dope' you know he wants 'Coca-Cola'?" "A. At the soda-fountain, yes, sir." No, sir; I have never heard of a "dope fiend"—oh, yes, I have heard of a "dope fiend," plenty of them, "coke fiends," "morphine fiends"—several others. No, sir; "coke" does not necessarily mean cocaine; it is applied to morphine, cocaine or any other habit forming drug. Yes, sir; when a man calls for "coke" I know he ordinarily means morphine or cocaine or some other habit forming drug—that is, if he was at the prescription

(Deposition of Guy Henderson Upchurch.)
counter, I would think so, but if he is at the soda-fountain and calls for "dope" or "koke" I would think he wanted a drink. The reason why I would think he wanted a drink is because he came to a place to get a drink and we don't serve cocaine or morphine at the soda-fountain. The two names "dope" and "koke" are inseparably connected in my association with "Coca-Cola"—in my estimation they mean "Coca-Cola"; yes, sir. If I was at the prescription case, or in the drug department, I would think they meant some habit forming drug, such as cocaine or morphine. Yes, sir; I think that as a result of long experience as a druggist. I know that cocaine fiends call for "cocaine" or "dope." You say you suppose that when I first heard the word "dope" or "koke" applied to "Coca-Cola" that I thought it was because it had cocaine or some extract of cocaine in it; well, I didn't know why it was called that. The only thing I knew it was a nickname for "Coca-Cola." No, I do not claim ignorance of the fact that for many years it was generally supposed **[473]** that "Coca-Cola" had cocaine in it. A great deal of the public supposes that now, so far as that part of it is concerned. You ask if the general public believes that it is cocaine or some mixture of cocaine that they are drinking; well, not the general public, but some part of the general public; however, there are a few people that have that idea—I frequently have the argument that it contains such things. No, they are not the people that call for it by the name of "koke"

(Deposition of Guy Henderson Upchurch.)

or "dope"; other people call for it as well as they do. Those who argue that don't drink it at all, it is those who drink it that call for it by those names. My information in regard to that is gotten from the people; I have asked a good many as to what they thought it contained and they argued with me that they thought it contained those things. What do I think is in it? I have no idea. Yes, sir; I am selling something I know nothing about, we do that frequently. If I tried to know what was in everything we would be in the insane asylum in a couple of weeks because we have patent drugs, patent beverages, and patent everything that we don't know anything about, but which we sell in the commercial world. Yes, sir; we have only one drink "Cocoa-Cola." Yes, sir; I have had a good deal of curiosity, in the years I have been selling it, as to what it contains, but I have never found out what is in it. Some of my customers believe that "Coca-Cola" contains something akin to "dope" or "koke"—cocaine or dope—and some don't. No, sir; as a druggist I don't handle things that are dangerous to the public without knowing something about them, not exactly. I don't consider "Coca-Cola" dangerous to the public, because in my experience having dispensed it as long as I have, my own observation has taught me that. No, sir; I have never followed up the "Coca-Cola" drinker to see what effect it has on him, not individually. No, sir; I don't know anything about "Coca-Cola," except just generally. I just sell it blindly over my

(Deposition of Guy Henderson Upchurch.)

counter because it is sent there to make a profit and there is a demand for it. No, sir; I would not sell anything there is a demand for that I could make money out of; I had a bountiful sale on morphine and cocaine about nine years ago, when I first came to Mobile and that is one of the first things I cut out, and I made a good deal of money out of it. There was no law against it at that time. **[474]** I but that out because I know that cocaine and morphine were injurious to the people. No, I don't know that I was liable to prosecution, civilly, if not criminally, for selling it. Mr. Pierce asked me about my testimony in this case on his last visit to Mobile—I will have to ask Mr. Pierce when that was. Then I think he saw me Saturday and I think he was in the store also Friday, I am not quite positive; I was thinking two days, I don't know which it was. Yes, sir; he has talked to me about this thing.

Redirect Examination by Mr. ROGERS.

No, sir; I have not testified to anything at this hearing to-day that was suggested either by Mr. Pierce or by you. The little jug was sealed Saturday, August first, I believe. Yes, sir, it was sealed immediately before it was taken from my store. "RDQ. 4. You refer to certain other beverages, counsel designating them as 'cola' beverages,—among others, 'Afri-Cola'; I wish you would state how these have been offered to you—they have been offered to you as drinks that are going to be ad-

(Deposition of Guy Henderson Upchurch.)

vertised and a demand created, or have they been offered to you as substitutes for 'Coca-Cola'?" "A. Why, cola drinks have been offered to me as substitutes for 'Coca-Cola' more than any other kind. I had one man at one time—I don't remember the name of the Company he was with, whether 'Afri-Cola' or some other Company, came here to the store and asked me the question if I meant to serve 'Coca-Cola' when 'Coca-Cola' was called for. My reply was I did, and I expected to do it, and if I expected to steal a nickel from a man and take a man's money without giving him what he called for, that I would quit the drug business." "RDQ. 5. The letter you have referred to, and which was offered in evidence as Exhibit #98, was written on your own accord and without any suggestions from the Coca-Cola Company, was it not?" "A. Absolutely was; yes, sir." In a majority of instances those who argued about "Coca-Cola" containing injurious drugs were people who do not drink "Coca-Cola."

Deposition of Dave S. Bauer, for Plaintiff.

DAVE S. BAUER.

Direct Examination by Mr. ROGERS.

I am 42 years of age, reside in Mobile, Alabama, and am in the **[475]** retail drug business here in Mobile, at North Constitution and Dalton Streets. I have been engaged in this business for twenty odd years, during which time I have handled and dispensed "Coca-Cola." The Coca-Cola Company

(Deposition of Dave S. Bauer.)

of Atlanta, Ga., makes "Coca-Cola." Yes, sir; I am about the soda-fountain so that I can hear what names the people use when they ask for drinks. Well, I have heard "Coca-Cola" named "dope," "koke" and other names. I think people use nicknames for "Coca-Cola" more so than they call for "Coca-Cola." When a man comes into our store and asks for a "dope" or a "koke" we have always understood that he wants a "Coca-Cola" and have always supplied "Coca-Cola," until very recently, and now we make them specify just what they do want. We first ask the question do they want "Koke," or do they want "Coca-Cola"? No, sir; I have never had a purchaser to refuse "Coca-Cola" when it was served to him in response to a request for either "koke" or "dope" on the ground that "Coca-Cola" was not what they wanted. You ask how long I have known the nickname "koke" and "dope" familiarly applied to "Coca-Cola"; seems to me always, since I have been around the soda-fountain, 25 or 26 years—24 years to be exact. Yes, sir; I recollect a call by the representative of the Southern Koke Company of New Orlenas in the latter part of the year. Two gentlemen came to see me. One introduced himself as the representative of the Southern Koke & Dope Company and said he had a soda-fountain beverage that he thought would interest me. I just referred him to my head soda water man and he said he wanted to talk to me about it, said he had a cola drink that he could replace "Coca-Cola," that we could serve at the foun-

(Deposition of Dave S. Bauer.)

tain and save money on the "Coca-Cola," and the public or no one could tell the difference, and save at least fifty cents a gallon on it. When I informed him that I didn't use any substitutes for "Coca-Cola" he told me that they had a copyright on their stuff "Koke" and "Dope," and that when the trade called for it that way I was expected to serve that, otherwise I would be subject to prosecution. He said that he had a copyright on the names "Koke" and "Dope" and argued that if people called for a beverage at a soda-fountain under the name "Koke" or "Dope" that is what we would have to serve, but if we served any other cola drinks in that place we would be subject to prosecution. The man **[476]** I had this conversation with left a card. The card filed as Plaintiff's Exhibit #100 came to me by mail advising me that their representative would be here. The man whom I have just spoken of presented me a card similar to this, with the exception, of course, that the writing was not on it. You ask me to state if this representative of the Southern Koke Company about whom I have testified, and who had this conversation with me, said anything about the possibility of selling his product on calls for "Coca-Cola"; in reference to that, he told me that if I wanted to serve "Coca-Cola" at my soda-fountain, and serve "Koke" and "Dope," that it would be necessary for me to have two casks, to keep out of trouble, that if I served "Koke" and "Dope"—at least if I served "Coca-Cola" when "Koke" and "Dope" was called for,—

(Deposition of Dave S. Bauer.)

I was serving something the customers didn't ask for and was liable to prosecution, that they had the copyright under that name. You ask if anything was said about substituting "Koke" for "Coca-Cola"; that was one of the first things that he told me, that I could serve "Koke" and "Dope," and that the calls for "Coca-Cola" the public wouldn't know it and couldn't tell the difference. I did not undertake any proposition from this representative. You ask if anything was said about the product he was selling which he denominated "Koke" and "Dope" being cheaper than "Coca-Cola"; if anything was said to me about my being able to make more money in the sale of his products than I would in the sale of "Coca-Cola," and if that was held out as an argument for me to purchase; to all of these questions I answer—yes, sir. Well, that is pretty much what he said, I think, after first trying to induce me to buy his syrup, as I understood it, as a substitute for "Coca-Cola," and after I informed him that I never sold a substitute for "Coca-Cola" and never expected to, he then told me, "Maybe you don't know it, but our syrup is copyrighted. You have more calls for this drink in our name than you do under the name of 'Coca-Cola.' Now, if you serve 'Coca-Cola' when our drink is called for, why, you are subject to prosecution"; and I said, "Well, I am going to see that they do not serve it." He says "How are you going to do that?" Then I showed him a sign we had on the fountain that said, "If you want 'Coca-Cola,' please call for it by its

(Deposition of Dave S. Bauer.)

correct [477] name, that is the only cola drink we serve at this fountain." Then, in addition to that, that when a customer calls for "Coca-Cola"—that is, when they call for "koke" or "dope"—to tell them they want "Coca-Cola," and, if they raise any question to our question of their intelligence, we would simply show them the card and let them know there are two different drinks. Well, he said, "You are busy and I will see you later," and that was the end of the conversation with him. Previous to that time I had given instructions to my soda dispensers to make the inquiry of purchasers who asked for "koke" and "dope" if they wanted "Coca-Cola." When they say "Give me just what we ask for," we say, "Well, we don't carry anything but 'Coca-Cola.'" In a good many instances they state, "Look here, I didn't come in here to be jollied, I came in here to get what I want." The dispensers would then say, "We just don't serve anything else but 'Coca-Cola,'" and this card would be shown to the purchaser, and in a majority of cases the fellows would just tell what they wanted. The card referred to is the one marked "Plaintiff's Exhibit #100." Of course, I watched this pretty close to see what effect it would have on my business, and visited my soda-fountain more often than usual, and, whenever I seen that card shown them, without one exception I heard the reply, "Say, I want 'Coca-Cola.' I didn't know there was two drinks, I didn't know there was another one like

(Deposition of Dave S. Bauer.)

that." (Plaintiff here tendered and offered in evidence the card marked Plaintiff's Exhibit #100.)

Cross-examination by Mr. DART.

No, sir; you didn't understand me to say that I carried no other soft drink but "Coca-Cola"; I said no other cola drinks. No, sir; when the words "dope" and "koke" were pronounced to me originally they did not convey any meaning to me and didn't suggest anything to me,—nothing more than a common name used for anything that is dopy, or contains an opiate, something of that sort. These are names that are used under all circumstances. They are often applied to medicine, whether it contains morphine or not. May be some people getting a "dope," say of ginger, may go to a doctor and he may give them a prescription containing anything, and they will say, "I have been to the doctor," and they will carry it to the drug-store and claim, "he gave me some medicine," [478] and speak of the ingredients of the medicine as containing a "dope." I would judge the word "koke" in general use to be applied as the word "dope," it always struck me that way. Of course, it depends entirely just how the statement is made—users of cocaine have been designated as "coke fiends" and sellers of cocaine have been designated as "coke sellers." Yes, sir, the names "koke" and "dope," as they bore themselves in on my mind for many years, indicated what I have just said,—a medicine or a dope of some kind—if it had in it the element of dope, or

(Deposition of Dave S. Bauer.)

morphine, or any drug of that kind, that is what it meant, any drug not specially a drug of, that kind, any kind of drug. Yes, sir, when the word "koke" or the word "dope" was originally used with me in regard to "Coca-Cola" it signified something of that kind. I have heard people say that "Coca-Cola" contained cocaine, but I have heard a good many people that knew better. Yes, sir; I have heard a good many people who have always contended it had cocaine in it, or some extract of cocaine. That was the general impression for years and years. I think that effect has been done away with now; I think different publications, literature, and one thing and another, has offset that impression. I suppose any of the public that keep up with such matters would suppose that it is free from such ingredients now, since the Pure Food and Drugs Act went into effect, otherwise it would have to be so stated on whatever container it went out in. I think the general impression was before the Pure Food Law went into effect that "Coca-Cola" contained possibly a principle of cocaine. No, sir; it was not perfectly proper for those who used "Coca-Cola" to call it by that name—"koke" and "dope"—and it was not sold leaving that particular impression. I take it that the public calling for "dope" or "koke" would simply be using a nickname as they would for any other beverage, or any other stimulant, they might want to drink. In my opinion, the public knew before the Pure Food Law went into effect that there was no cocaine in "Coca-Cola," because they had been

(Deposition of Dave S. Bauer.)

educated to the fact for years—advertisements and one thing and another, and from personal statements that the only stimulant in "Coca-Cola" was caffeine; and I know we have made the statement for years, and I have heard it for years, that "Coca-Cola" contains the same percentage of caffeine to [479] a glass as a cup of coffee would contain; that's as far as I ever thought it was druggy, you know. The name "koke" implies coca, and cocaine is derived from coca leaves, but it doesn't necessarily follow that if "Coca-Cola" has no coca or anything of that kind in it, that it isn't the correct name of the article, because in the manufacture of any pharmaceutic or chemical product you can eliminate any part of the chemical substance you see fit to in the process of manufacture. However, I know nothing of the manufacture of "Coca-Cola." No, sir; it was not originally understood that "Coca-Cola" meant an ingredient or mixture in which coca leaves formed a part, and I never understood it that way. I have always understood "Coca-Cola" was a syrup made with some coca leaves and from cola nuts, and I still understand it that way. I understand that from the name of the product and from information I get in the drug business. I was in the drug business when "Pemberton's Wine of Coca" was put out years ago, and I was informed that they sold their formula to other parties and that they then manufactured a syrup, when "Pemberton's Wine of Coca" was sold, as an extract of coca leaves—that it contained no dope of any kind. No, sir; I didn't get my under-

(Deposition of Dave S. Bauer.)

standing as to the ingredients of "Coca-Cola" from Pemberton; I suppose I got it from Pemberton's salesmen, when I was a boy, and from the name "Coca-Cola." Yes, sir, I have seen the Coca-Cola Company's label which contains a picture of coca leaves and cola nuts, but I haven't noticed it enough recently to be able to tell you whether or not they still use it. However, that was the label they used for years. Yes, sir; when I first heard of "Pemberton's Wine of Coca," years ago, it had a considerable sale. It was in the store I worked in and had considerable sale in that store. I sold a great deal of it myself. Yes, sir; that was sold to the consuming public. I don't remember the labels that were on it. I can't remember that the label bore the statement that it was made from Erythroxylon coca and cola nuts, or from the extract of erythroxylon coca and cola nuts, but it was generally understood that it was composed of those ingredients, and it was so understood for sometime before "Coca-Cola" came out. Yes, sir; I have heard people ask for cola beverages besides "Coca-Cola." [480] I have heard them ask for "Gay-Ola" and for "Carre-Cola"—that last is manufacured in Mobile by D. Carre Company—I don't think of any other. "Carre-Cola" is the same color as "Coca-Cola." I don't know whether or not there are as many as 150 cola beverages on the market, but I say I know of some of the 150, meaning thereby a large number. I have no idea how many I know of. All of those that have come under my observation are the same color as "Coca-Cola." I

(Deposition of Dave S. Bauer.)

couldn't tell you whether or not they all taste similar to "Coca-Cola," because I have never tasted any except the "Carre-Cola." Yes, sir, I guess I have heard these other beverages called for by the purchasing public. I don't think I have heard any called for except "Carre-Cola" and "Gay-Ola. No, sir; I don't know the names the public use in calling for these numerous cola beverages. There are a number of soda-fountain beverages, some of which may be a cola drink and may not be a cola drink, and you may refer to one of them. I understand you to mean by cola drink, a drink that is similar in color, taste and appearance to "Coca-Cola." Any recognized cola drinks, or any that have been advertised, are the only ones I have heard the public call for. I know there are quite a number of them, among which are "Afri-Cola" and "Gay-Ola." I don't know about "Ala-Cola" or "Ko-Nut" or "Wise-Ola." We don't handle "My-Coca." "Chero-Cola" doesn't make a similar drink—the "Chero-Cola" I have seen doesn't make a similar colored drink as "Coca-Cola." The difference in color is that "Chero-Cola" is a considerably lighter brown and so much lighter that I could readily tell it at a glance. I am speaking of the soda-fountain beverage I have seen by the name of "Chero-Cola." I don't know who sells it here in Mobile. I have also heard the public ask for "Lime-Cola." That is a soda-fountain drink put up by Parke-Davis & Company of Detroit. I have heard that bought and sold on the market, and I have sold it, but I don't know who else sells that here. I don't re-

(Deposition of Dave S. Bauer.)

member the color of that drink, it has been sometime ago since I sold it; it isn't any way similar to "Coca-Cola," though. I would say that it differs from "Coca-Cola" in the respect that the lime flavor predominates. I don't believe I could tell you the difference between it and "Coca-Cola" in color. **[481]** I couldn't tell you whether or not it is about the same color as "Coca-Cola." It has been about ten years since I handled it. That was sold as "Lime-Cola," not as a substitute for "Coca-Cola." I have never heard of any one asking for "Wise-Ola," "Ala-Cola," "My-Coca," "Rye-Ola," "Afri-Cola," or "Ko-Nut," except what traveling salesmen have told me. No, sir; I don't know the names by which the public asks for these drinks or for drinks of that class. I don't know whether they ask for those drinks by the names of "dope" and "koke" or not. No, sir; I don't know whether "koke" and "dope" are also nicknames for those drinks. I know that "Coca-Cola" is manufactured by the Coca-Cola Company of Atlanta, Ga., because the label on the barrel says so. No, sir; although you have presented me with the card filed as Plaintiff's Exhibit #100, for inspection, I cannot tell you the name of the man who discussed with me the substitution of "Koke" syrup for "Coca-Cola" syrup. He gave me his name, but I have forgotten it. You ask if it was Mayfield; that I couldn't tell you, it may be Mayfield, but I have forgotten. I doubt if I could remember the man if you were to describe him. I don't remember his name or anything by which I can describe the man. I have been in the

(Deposition of Dave S. Bauer.)

drug business between 24 and 25 years, during which time I have been dispensing at my soda-fountain root beer, sarsaparilla, and drinks of that kind. Sarsaparilla has been on the market to my knowledge since I have been in the drug business and longer, as long as the United States Pharmacopoeia has been in existence. I should say it has been in existence fifty years, if not longer. The color of the soda-fountain sarsaparilla syrup during this time has varied according to the strength used by each particular dealer. I might make my sarsaparilla syrup thicker than anybody else, and mine, of course, would be a darker color. However, it has all had the same general color, which is a brown. I have made sarsaparilla myself, and have colored it with brown sugar or caramel coloring. Yes, sir; as long as I have known sarsaparilla syrup as a soda-fountain beverage it has been colored with caramel coloring. Yes, sir; I have also handled root beer for the same number of years. It has been known longer than I have been in business and it has always had that same dark brown color. I should think that "Coca-Cola" and sarsaparilla are not the same color. In [482] general coloring they are alike—as a matter of fact, both of them have a dark brown color, and so has root beer. Yes, sir; caramel is recognized as a standard brown coloring matter for syrup and is in universal use and was in such universal use when I was a boy. I am 42 years of age, and caramel has been used as a coloring for syrup ever since I can remember, by every druggist that I have come in contact with. I

(Deposition of Dave S. Bauer.)

have never handled "Coca-Cola" in bottles. Mine is a fountain dispensary altogether.

Redirect Examination by Mr. ROGERS.

No, sir; "Pemberton's French Wine of Coca", which I spoke of a moment ago, was not a soda-fountain beverage; it was put up in bottles—my recollection is about three-quarters of a pint. No, sir; when I first heard the name "Coca-Cola" I had never heard that phrase,—"Coca-Cola"—before. Yes, sir; when I first heard it in connection with the product of the Coca-Cola Company, it struck me as a new phrase.

Deposition of Edwin Roy Albright, for Plaintiff.

EDWIN ROY ALBRIGHT.

Direct Examination by Mr. ROGERS.

I am a druggist and reside at Mobile, Ala. I am a member of the firm of Albright & Wood, which firm operates two drug-stores in Mobile, one at Dothan & Jackson Sts., and the other at Government & Royal. We have been in business two years and six months and have soda-fountains at each of our stores. We handle "Coca-Cola." The Coca-Cola Company, I guess, of Atlanta, makes "Coca-Cola." Yes, sir; to a certain extent I am about the fountain myself so that I can hear people when they come in and ask for drinks and so that I can understand and know what names they use. Yes, sir; I know of nicknames for "Coca-Cola" that are commonly used; namely, "dope." Well, I have heard "koke," yes, sir, but not as frequently as "dope." When a man comes into my soda-fountain and says, "give me a 'dope,' "

(Deposition of Edwin Roy Albright.)

or give me a "koke," I understand that he means "Coca-Cola" and supply "Coca-Cola." I have never had it rejected on the ground that it was not what was wanted. [483] During November, 1913, I had an interview with a representative of the Southern Koke Company of New Orleans. No, sir; I don't remember what the man's name was. You ask was it Patton. Yes, sir; that's it, Patton. Well, he wanted to sell a syrup called "Dope." I told him I didn't handle any substitutes for "Coca-Cola" and he claimed it was not a substitute. He said that it was to be supplied when people asked for "dope" and that they had the name "Dope" copyrighted, etc., and that I had just as much right to give a man "Dope" when he asked for "Dope" as I did to give him "Coca-Cola" when he asked for "Coca-Cola" and he based his argument on these facts—he didn't try to sell it as a substitute for "Coca-Cola." He also said that his company had the name "Koke" copyrighted and that I should give my customers "Koke" syrup when they asked for "Koke." He said that we should have two containers and when they asked for "Koke," give them "Koke" and when they asked for "Coca-Cola," give them "Coca-Cola," and when they asked for "Dope" to give them "Dope." Dope and Koke were the same. He said that it was unfair competition to sell people "Coca-Cola" in response to requests for "Koke" and "Dope" and that dealers who served "Coca-Cola" for "Dope" would be liable to prosecution at the suit of the Dope Company, which was the Com-

(Deposition of Edwin Roy Albright.)

pany he was representing. I told him we had more demand for "Dope" than we had for "Coca-Cola" and I told him we always supplied "Coca-Cola" when "Dope" was called for. His argument was that they had the names "Dope" and "Koke" copyrighted and that a dealer who supplied "Coca-Cola" for those articles when they asked for "Dope" and "Koke," would be liable to prosecution, that they owned those names the same as the "Coca-Cola" people did "Coca-Cola." Well, we bought two barrels of the product of the Southern Koke Company, Ltd., the price of which was less than the price of "Coca-Cola" syrup—that is, it was cheaper to us. The paper marked Plaintiff's Exhibit #101 is a carbon of a sales slip bearing at the top the name Southern Koke Company, Ltd. That slip represents one of the purchases we made—I don't know whether it is the first or second. Patton also said something about some stock, but, really, I have forgotten what the stock was and how it was [484] to be given, etc. Yes, sir; there was to be issued to purchasers of "Koke" and "Dope," the produce of the Southern Koke Company, so many shares of stock in the Southern Koke Company with each barrel,—that is about all I remember about that stock proposition. Yes, sir; I received the product "Koke" of the Southern Koke Company and sold it at the fountain in response to requests for "Koke"—I had two jars. When people asked for "Koke" I gave them "Koke." Yes, sir; by "Koke" I mean the product of the Southern Koke Co., and when they asked for "Dope" I gave them

(Deposition of Edwin Roy Albright.)

that—that is, the product of the Southern Koke Co., Ltd. On January 17, 1914, I wrote a letter to the Southern Koke Company at New Orleans, a carbon copy of which letter is filed as Plaintiff's Exhibit #102. In reply I received a letter dated New Orleans, January 19, 1914, on the letterhead of the Southern Koke Company, which is filed as Plaintiff's Exhibit #103. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #101, 102, 103.) Why, I should say I have known the nicknames "koke" and "dope" to be applied to "Coca-Cola" about eight years—eight or ten years.

Cross-examination by Mr. DART.

I wanted the stuff shipped without the labels, because I didn't care for my customers to know that I was using the stuff at all; if they knew it, they might use it in an unfair way to say that I was using it instead of "Coca-Cola." No, I did not serve it in the place of "Coca-Cola." Yes, sir; it did come to me without labels. I don't handle it any more. Yes, sir; I felt that when this salesman said we were handling it he violated our confidence. I didn't like that and I decided I did not care to use anything but "Coca-Cola." No, sir; I did not know a thing about this lawsuit at the time I wrote the letter. No, sir, I was not afraid of a lawsuit, I didn't feel like I was violating any law, because I didn't serve it as "Coca-Cola,"—I served it as "Dope." I didn't care to incur the ill-feeling or enmity of the Coca-Cola people, but I can't say that that was one of the things on my mind. It was my own feeling in the matter. I

(Deposition of Edwin Roy Albright.)

didn't think I was doing right. I know that I drink "Coca-Cola," and have for years, and did before I went in business on my own account, and when I went into a place and asked for [485] "dope" I expected "Coca-Cola." Well, I couldn't say that the word "dope" when used in regard to "Coca-Cola" would signify to me a drink that was druggy or had a drug in it. I don't know why anybody should call a straight drink that had no drug in it "dope." I have heard people call for cigarettes even by the name of "dope." I have had people come in and ask me for a pack of "dope." I wouldn't understand "dope" to signify anything that has become a habit with people, not in a case of that kind, under other circumstances, it would, yes, sir. No, sir; the word "dope" would not necessarily indicate that there was something in the particular thing they were calling for that was stimulating that they had to have. "Dope" meant nothing more to me than the article that they wanted. When a man calls for "dope" without expressing anything else, I would think he wanted "Coca-Cola." I don't know why, but it has just been customary at soda-fountains—at our fountain. No, sir; it was not because "Coca-Cola" was recognized as having some element of cocaine in it, or some "dope" in it. Well, there is a general impression, yes, sir, that it has those things in it; I have had people remark those things in the store. That impression is probably still in existence, I couldn't say. Yes, sir; I know the general impression is that "Coca-Cola" had something in it which lead to the

(Deposition of Edwin Roy Albright.)

use of the word "dope" as an alternative for "Coca-Cola." No, that's not how I recognized what they wanted. I said when a man asked for "dope" I understood that he wanted "Coca-Cola." No, sir; I didn't ask him, that's my understanding of the word. When a man comes to a soda-fountain and asks for a "dope," I understand that he wants "Coca-Cola," not something that is "dope." Yes, sir; that he wants a dope that is called "Coca-Cola." You ask if I recognize it as his particular "dope"; I recognize it as the drink that he wants. I have not heard it called "koke" as often as "dope." I very seldom ever hear it called "koke" any more. No, sir; "koke" did not pass out of general use long ago; I hear it occasionally now. The word "dope" is used frequently, even, possibly, as many times as "Coca-Cola," but the word "koke" is used very infrequently. No, sir; we don't handle any other drink now except "Coca-Cola," and, so, of course, I don't know what the users of other drinks call their particular drink. **[486]**

Redirect Examination by Mr. ROGERS.

"RDQ. 1. Mr. Albright, you stated a few moments ago, in answer to a cross-question, that you didn't serve this product of the Koke Company of America for "Coca-Cola"; the fact is, isn't it, that you didn't serve it to people who used the word "Coca-Cola" in making their request?" "A. Exactly, yes, sir." "RDQ. 2. You did, however, serve it to people who used the words 'koke' and 'dope.'" "A. Yes, sir."

(Deposition of Edwin Roy Albright.)

Recross Examination by Mr. LITTLETON.

The way I know that "Coca-Cola" is manufactured by the Coca-Cola Company of Atlanta is because it has always got labels on it to that effect.

Deposition of George L. Seibert, for Plaintiff.

GEORGE L. SEIBERT.

Direct Examination by Mr. ROGERS.

I am 21 years old, live in Mobile, and am soda dispenser for Dave F. Bauer, the druggist here in Mobile. His place of business is located at Dalton and Constitution Sts. Yes, sir; I was working for Mr. Bauer the latter part of 1913 and continuously in 1914, as a soda dispenser. Yes, sir; I recognize the card presented to me marked Plaintiff's Exhibit #100. It's a card ordering us to sell them what they want when they come in and ask for it. Yes, sir; we dispense "Coca-Cola" at our fountain. Yes, sir; we hear the word "koke" used at the fountain. I understand that a man wants "Coca-Cola" when he comes in and asks for "koke," or "dope" and I supply "Coca-Cola." The occasion of this card was to try to get the people to call for "Coca-Cola" when they wanted it—that they didn't have "Koke" or "Dope." By "Dope" and "Koke" in this connection, I mean the product of the Southern Koke Company. When people come in and asked for "dope" before I got this card, I would give them "Coca-Cola" and when we got the card down there Mr. Bauer told us what to do and say—we handed it out to them and they would say, "you know what I want—'Coca-Cola' "—

(Deposition of George L. Seibert.)

and it made a few of them mad, you know,—I mean by that, by giving them the card and telling them that we didn't have "Dope" and "Koke,"—they said "I want 'Coca-Cola,' " that's what they would say, it would be nine out of ten that would tell you that. Well, no, sir; they did [487] not express any surprise or say anything, on being informed that there was a product on the market sold under the name of "Dope" and "Koke," but the card, why, it helped us out and they say "give me a 'Coca-Cola'." Our purpose in showing this card to the people was to let them know we didn't handle "Koke" or "Dope." You ask if, from my experience as a soda dispenser, I have formed any opinion as to the meaning of the words "koke" and "dope"; well, the only way I can say, it would be more of a nickname for "Coca-Cola." When people want that, they think of it quicker and it's more of a nickname for it, too, because anybody coming in there—I have seen it quite often happen—and asking for "koke" or "dope," they go to ask you about Candler in Atlanta, telling you how he got rich off of it, and they call for a "koke" at the same time and then they will tell you about it; therefore, they mean "Coca-Cola" when they come in and ask for it.

Cross-examination by Mr. DART.

I have been here with Mr. Bauer about fifteen months, I suppose. The word "dope" has no meaning to me except "Coca-Cola," that's all. I have never heard it used in any other way at a soda-fountain. Yes, sir; it has a meaning. I understand it to mean generally "Coca-Cola." When you ask me or

(Deposition of George L. Seibert.)

anybody else for "dope" you get "Coca-Cola" down at Bauer's Drug Store. Well, I have heard of "dope" as something else besides "Coca-Cola," but I have never seen any of it. "XQ. 8. I ask you again, you have never heard of 'dope' as anything else but 'Coca-Cola?'" "A. Well, it might have been something on the order of 'Coca-Cola.'" I understand "dope" is "Coca-Cola." "XQ. 10. You have lived in this world so long or so short a time you don't know whether 'dope'"—"A. Yes, sir; a fiend, or a dope fiend—the stuff that they take, something on that order." Yes, sir; I know that the word "dope" as a general thing is a word signifying the use of a drug or something like a drug, something that stimulates you—it can be used in that way. By dope fiend I mean that different people take coke, for instance, things like that—cocaine or morphine. No, sir; as a rule when I speak of "dope" I do not mean cocaine or morphine, but I do not still insist that the word "dope" has no other meaning [488] than "Coca-Cola," because it has other meanings like I told you—a field—anyone taking cocaine, you call that "dope," and it means a drug on the order of cocaine, that's the only way I have heard of it, and a drink something on the order of "Coca-Cola." No, I have no idea why they call "Coca-Cola." "dope." You ask if there is any other drink I know of called "dope"; well, only on the order of "Coca-Cola." Yes, sir, any drink on the order of "Coca-Cola" is called "koke" and "dope." Outside of the drinks "Koke" and "Dope,' in this law-suit, I don't know

(Deposition of George L. Seibert.)

of any other soft drinks that are called "dope." No man has ever used the word "dope" in my hearing, except he meant "Coca-Cola," and it is my belief, except he is addicted to cocaine or morphine, and is, therefore, called a "dope fiend," the word "dope" has no other meaning. Well, no, sir, I don't think that "dope" as applied to "Coca-Cola" signifies that it has cocaine in it. Yes, sir; I had thought of that before you asked me the question. Some of the rank and file of people generally believe there is cocaine in "Coca-Cola' and some of them believe other things. You ask if it isn't the general impression that it has cocaine in it; well, I have heard them say it has caffeine in it, but I have never heard them say it has cocaine in it. I say some of them say it has caffeine in it, because I have heard them say so. If I said awhile ago that some of them say it has cocaine in it, I didn't mean it, I meant caffeine. No, sir, we do not handle any other cola drinks at our fountain except "Coca-Cola." I have never heard anybody ask for any other cola drinks than "Coca-Cola." I have never heard them call for "dope" in bottles, but I have heard them call for "Coca-Cola" in bottles. Yes, sir, the words "koke" and "dope" are used interchangeably, one as much as the other—both used as a nickname for "Coca-Cola." You hear it called all three of those names; "koke," "dope," and "Coca-Cola" pretty regularly down here. Yes, sir, they call for "Coca-Cola" more often than they do for "koke." Yes, sir, the proportion of ninety-nine

(Deposition of George L. Seibert.)

out of a hundred will call for "Coca-Cola" by that name.

Redirect Examination by Mr. ROGERS.

You ask if I intended to say that ninety-nine people out of [489] every hundred called for this product by the name "Coca-Cola"; I said it, but they don't do it. When they call for "Coca-Cola" they call for "Coca-Cola" most—Yes, sir; that is, at our place. I don't know how long that has been true, a good while. There would be one-third of the people ask for "Coca-Cola" under the name of "dope." Yes, sir; I have seen "Coca-Cola" advertised and have also seen advertising of other cola drinks. No, sir; the advertising of these other cola drinks has not been as extensive as the advertising of "Coca-Cola."

Deposition of John W. Graham, for Plaintiff.

JOHN W. GRAHAM.

Direct Examination by Mr. ROGERS.

I live in Mobile, Ala., and am working at Bienville Pharmacy. That is the institution of which Mr. Upchurch is the President. I have been employed there several months this last time. I came the last time on the 15th day of February, 1914, but I worked there before. I had a few words with the representative of the Southern Koke Company about the last of February. Some one came in and asked for "koke" and I served him with "Coca-Cola" and this gentleman walked up—he asked to see the boss—the boss was busy right then, but I told him he could see him in a few minutes. He asked me if I had many

(Deposition of John W. Graham.)

calls for "koke" or "dope," and I told him, yes. He asked me did I serve "Coca-Cola," I told him yes. He asked me again did I think that they meant "Coca-Cola" when they asked for "koke." I told him, yes, because I asked them what they meant and they told me what they meant, therefore I served them "Coca-Cola." He said, "Why not have a 'koke'? You can get it a whole lot cheaper than you can 'Coca-Cola'." I told him I didn't know anything about that, I didn't know the price of "Koke." He said he was selling it and wanted to see the boss. I don't know whether he ever saw him or not, I went to dinner. Anyway, we talked quite a little bit on it and I said that a man who asked for "koke" and "dope" or "shot," meant "Coca-Cola," simply because when I first went behind the fountain I was an inexperienced man and didn't know what they meant and [490] they said "Coca-Cola," of course. When I got experience, a man came in, asked for "koke" nine out of ten he wants "Coca-Cola"—you ask him and he tells you what he wants. I made this statement to this man, who said he was the representative of the Southern Koke Company. We got into an argument and he said that when a man came in and asked for "koke" that I could serve him "Koke" and he would be getting what he asked for; that is I could sell him the product of the Southern Koke Company, Ltd. I said "No, he means 'Coca-Cola'." To the best of my knowledge thats the last time I saw this man, I didn't pay much attention, we talked about it, that's about all.

(Deposition of John W. Graham.)

Cross-examination by Mr. DART.

In my experience the average man does not call for "Coca-Cola"; he calls for "koke" and "dope" and "shot,"—those three words. I am twenty years old. You ask if I ever heard what "a shot" meant. What I think "shot" means, is when a doctor shoots some morphine or cocaine or something in your arm, that's what I always thought a "shot" was. "Shot" and "dope" mean what a man craves, what he wants —that's what I think. When a man asked for the first time for "a shot" I didn't know what he meant, I hadn't served "Coca-Cola" more than a half dozen times and I asked "a shot"?—what it meant, and he said, "Coca-Cola"—I didn't know what he meant. It was new to me, I thought I would find out about it, and I asked him what he meant. They ask for "dope" and "koke" I think about two-thirds, my experience has been. Yes, sir; they gave me the idea that they looked on "Coca-Cola" as a "shot." When they asked for "koke" I thought they meant "Coca-Cola." They gave me the impression when they asked for "dope" or "a shot" that they were asking for a drink that was the equivalent of a "dope" or a "shot," and to a certain extent it made me think of what I have often heard, that "Coca-Cola" has cocaine in it. I can't say that that is the impression of most of those who drink "Coca-Cola"; some think it, some not. I have talked to some and they believe they are getting a little cocaine in their drink when they get it. [491]

(Deposition of John W. Graham.)

Redirect Examination by Mr. ROGERS.

No, sir; I do not know whether or not there is any cocaine in "Coca-Cola." I don't know nothing about the process of what it possesses, no more than the man in the moon. I serve it but still I haven't the least idea of what's in it. That is the product that is bound to be meant when our customers come in and ask for "dope" and "koke." Whenever I ask one he says "I mean 'Coca-Cola,' "—he wants "Coca-Cola,"— I say, "How about if I give you a 'Koke ?" "Well," he says, " I won't drink it." I have been there about two years and that's the question I ask them because I was instructed to do so.

Recross-examination by Mr. DART.

Of course, I was not acquainted with these nicknames until I hit these fellows explaining and teaching it to me. I never had heard these words before in connection with this drink.

Deposition of Robert Chidsey, for Plaintiff.

ROBERT CHIDSEY.

Direct Examination by Mr. ROGERS.

I am manager of the Etawah Company—soda water and ice-cream parlor—250 Dauphin St., Mobile, which concern operates a soda-fountain. Yes, sir; we dispense "Coca-Cola." The Coca-Cola Company, Atlanta, Ga., is the maker of "Coca-Cola." Yes, sir; that is the product that is extensively advertised under the name of "Coca-Cola." Yes, sir, I recollect having a call from a representative of the Southern Koke Company, Ltd., about three or four

(Deposition of Robert Chidsey.)

months ago. He proposed to sell me his syrup called "Koke," which he claimed was a good substitute for "Coca-Cola" and that it could be sold for "Coca-Cola" and I stated to him that I didn't care to purchase this syrup to sell in place of "Coca-Cola" and he thereupon figured up the difference in profit between "Coca-Cola" and his stuff. Under his way of figuring it, his syrup cost me about fifty cents a gallon less than "Coca-Cola." He told me that if I bought a certain number of gallons within a year's time that I would get a rebate. I don't know exactly how much it was now, but it must have been somethink like twenty-five cents a gallon if I bought as many as two thousand gallons. This representative had **[492]** a card, but I have misplaced it, and, also, the letter which he sent me, after he left here. Yes, sir; he sent me a gallon of this "Koke" syrup." It was put up in a jug, the same kind of a jug, I believe, that the Coca-Cola Company puts it up in when they send it out in gallons, and had a label on it marked "Koke" and the name of the concern, Koke Company of New Orleans, on the label. This was shipped by express. The name on the letter-head of the letter that I received was "The Koke Company, New Orleans, La." The card was similar to the letter-head. I expect I sold the jug for I had a number of other jugs from the Hungerford-Smith Co. I haven't got it.

Cross-examination by Mr. DART.

No, sir; I couldn't recollect the name of the man that called on me, because I misplaced the card. As

(Deposition of Robert Chidsey.)

near as I can remember, he was a rather stout man like Mr. Rogers, here, and had dark hair, I believe, that's as good a description as I can give because I only talked to him a few minutes. I didn't know him before he called on me, and, without any preliminary knowledge of me or I of him, he opened the proposition for me to commit a fraud on the public by substituting his goods for "Coca-Cola"—that's my testimony. You ask if that wouldn't have been an arrant fraud; well, he told me I was a little too conscientious about the matter. I don't know whether or not he thought I was that kind of a man when he approached me. Yes, sir; I am quite sure that this man, an utter stranger to me, walked in my store and made that proposition to sell me some stuff and told me I could serve it in the place of "Coca-Cola." Yes, sir; he did tell me that he had a syrup called "Koke" that had been on the market for years, and that he had that name copyrighted. He didn't however, tell me that the name was well known to the trade. He claimed that I could make more money out of this stuff as it would cost me less money than "Coca-Cola." Yes, sir; that is all he said to me. He said I could sell "Koke" in the place of "Coca-Cola" and make more money out of it. He said I would get the same price for it as I did for "Coca-Cola" but argued that if a man came along and called [493] for "Coca-Cola" I could serve him that, which would net me a greater profit than if I gave him genuine "Coca-Cola." Yes, sir; I still insist that his only object in

(Deposition of Robert Chidsey.)

seeing me was to induce me to buy his syrup and sell to my customers instead of "Coca-Cola." He thought if I handled his goods it would be a benefit to him, as well as myself. I don't know whether you would call it a fraud or not, but he put the proposition up to me that if I served the syrup he had in place of "Coca-Cola" I could make a greater profit out of the business than I could by serving the real "Coca-Cola." Yes, sir; I am sure that he used the words "in place of 'Coca-Cola'," and not "as a substitute for 'Coca-Cola'." Well, he said a great many things, I suppose, that he considered in his favor and mine, but that's what it really amounted to, and I rejected his proposition. The reason why he sent me a gallon afterwards was because he told me I could try it and taste it and if I didn't think it was as good as "Coca-Cola," and it couldn't be served as "Coca-Cola," that I needn't bother about it any further. I did try it and served it to my customers and tried it myself. I didn't think it was as good as the "Coca-Cola" product. No, sir; I didn't sell it, I threw it away. No, sir, I didn't keep the jug. I sold it among a lot of others, probably 50 or 75 jugs, I had. I acknowledged receipt of this jug only by signing the slip of the express company, the receipt. I said he wrote me a letter, but I can't find it right now. No, sir; I did not answer it. Yes, sir; the letter came probably a day before the jug did, advising that he was sending the jug and I could try it. I haven't talked to anybody, especially, about this matter of my testimony. Mr. Pierce asked me about

(Deposition of Robert Chidsey.)

it, if I had been solicited on the subject. I don't know how he knew I had been approached in this matter. He asked me if I had been solicited, and I told him, yes, which I had. I told him what I told you; he knew nothing of it until he called on me, that I know of. It is not for me to say why he called on me. Yes, sir; I came up here without a subpoena at the request of Mr. Pierce. No, sir; I did not come in his company. It was yesterday that I first talked to Mr. Pierce about this matter. [494] I am secretary, treasurer, and general manager of this establishment I am talking about. I couldn't fix definitely the time when this stranger called on me with this proposition, because it is just like drummers passing in and out, like that, and I don't recollect the date. Oh, it has not been longer than four months ago.

Deposition of Robert W. Elliott, for Plaintiff.

ROBERT W. ELLIOTT.

Direct Examination by Mr. ROGERS.

I am 32 years old, am a soda dispenser, and have charge of the Van Antworth soda-fountain department in Mobile, Ala. This concern is, I suppose, about as large as any in the South. The Van Antworth is a large drug-store here in Mobile. Yes, sir; I am familiar with the product that is advertised under the name of "Coca-Cola." The maker of that is the Coca-Cola Company, Atlanta, I believe. I have known of "Coca-Cola" ever since I have been in the soda water business, say fourteen years, I guess. Yes, sir; I am about this fountain at our

(Deposition of Robert W. Elliott.)

store, and have been in other stores where I have been employed, and have heard the names people use when they order drinks. Yes, sir; people come into the soda-fountain and say "give me a 'dope'" and "give me a 'koke'" and, when they do so, I understand that they mean "Coca-Cola" and I supply "Coca-Cola" in response to such demand. No, sir, I have never had it rejected on the ground that it was not what was wanted. "Q. 18. State what the facts may be in respect to the words 'koke' and 'dope' being commonly used as nicknames for 'Coca-Cola.'" "A. Well, they are commonly used as nicknames for 'Coca-Cola'." I have known these words "koke" and "dope" being used as nicknames for "Coca-Cola" ever since I have been working around soda-fountains, about 12 or 13 years.

Cross-examination by Mr. DART.

No, sir; I don't personally know that "Coca-Cola" is manufactured by the Coca-Cola Company in Atlanta, Ga., but I know when I order our "Coca-Cola" supply we order it from that concern direct. These people who came in to drink "Coca-Cola" in our place ask for it under different names; they ask for it under "Coca-Cola"—I have heard them ask for it under "dope"—I have heard them ask for a "koke"— **[495]** I have heard them call for a "shot in the arm," meaning "Coca-Cola," and I have also heard them call for "morphine coctails,"—a good many nicknames, all meaning "Coca-Cola," they are all satisfied when we give them "Coca-Cola," we never hear any complaint. There is no

(Deposition of Robert W. Elliott.)

way of getting at the proportion of people who ask for "Coca-Cola," using the name "Coca-Cola," I don't think. A customer will come in to-day and call for "Coca-Cola" and to-morrow he will nickname it. You ask if the word "Coca-Cola" is not liable to fall into disuse and be substituted by these other names; well, when they call for "dope," anything of that kind, we serve them "Coca-Cola." I couldn't tell you exactly what percentage of our customers who call for "Coca-Cola" use the proper name. I don't know, sir, why they should call it "morphine cocktail," it is just a nickname some people have given it. You ask why should they call it "shot in the arm"; that is just another,—"dope," you know, is a "shot in the arm." When a person gets "dope" they get a "shot in the arm." "Dope," in that sense, I suppose, would be cocaine, something of that kind, or morphine, but that is just a nickname that the customers have given it. Yes, sir, these customers of ours call for this drink in the language of a dope fiend. Oh, no, sir, they are not dope fiends, all of them, not that I know of. "XQ. 17. And you know this language is of a dope fiend and consequently supply 'Coca-Cola' when they call for 'dope'." "A. Well, working around a place that way we are supposed to know what he wants, if he nicknames it, calls it anything else, we are supposed to know he wants 'Coca-Cola'." Ever since I have known anything about it, I have known it to be called that way. I couldn't say whether this is based upon the theory that there is "dope" in it or not, nor

(Deposition of Robert W. Elliott.)

could I say whether or not it is the general impression that there is "dope" in it. Oh, I don't know, sir, whether a man would call for "morphine cocktail" unless he though the drink he was going to get would set him up; I have heard people call for lots of other things by nicknames when there wasn't any "dope" or anything else in it. No, sir; I don't believe I do know anything about the other things I speak of so universally referred to in this slang language. **[496]** No, sir, our lady customers do not call for "shot in the arm," I have heard lots of them call for "dope," though. No, sir, it left no impression on my mind as to why this drink should have gotten that name. No, sir, I have not heard our people discuss the fact that it had cocaine in it or morphine. I haven't talked to them about it. My duty is simply to gather in the various ways in which they speak of this drink, and serve it to them. Yes, sir, I have got the vocabulary that can meet the demand. You ask if I am willing to say that ten per cent of my customers call it "Coca-Cola"; well, I will tell you I have never tried to keep track of how many really did call it by nickname. I have never paid any attention to how many call it "Coca-Cola" or how many call it 'dope," or any other name, nor do I know how many people a day drink "Coca-Cola"; that is hard to say, but we use a great deal of it. Of course, we don't handle any other cola drinks. Yes, sir, I am entirely a "Coca-Cola" man,—and so is my establishment—that is, we sell nothing on that order except "Coca-Cola"—in fact, we sell no other patent drink except

(Deposition of Robert W. Elliott.)

"Coca-Cola"; besides one, we make all our own stuff. I don't believe I ever did hear of a man ordering any other cola drinks. I have heard of other cola drinks, but I have never heard a man ask for another cola drink over the fountain. Of course, I don't know what other people call their particular "dope," or their particular drink, rather. I don't know whether they call for their drinks as "dope" and "koke" or not, nor do I know whether or not "dope" and "koke" are common names for cola beverages as a class.

Deposition of I. V. Wood, for Plaintiff.

I. V. WOOD.

Direct Examination by Mr. ROGERS.

I am connected with the firm of Albright & Wood, druggists, Mobile, Ala. We have two stores, one at Dalton & Jackson Sts. and the other at Government Street, in each of which we have soda-fountains from which we dispense "Coca-Cola." I have known "Coca-Cola" for about twenty some odd years, I guess—about twenty years, I think. You ask who makes it; well, the label on the barrel says it is made by the Coca-Cola Company of Atlanta. **[497]** Yes, sir, it has been extensively advertised. Yes, sir, I have been about the fountain enough to be able to testify that I know how people ask for the drinks they want. Yes, sir; I have heard the words "dope," and "coke," used as nicknames for "Coca-Cola." I have known them to be used as nicknames for "Coca-Cola" practically as long as I can recollect the name "Coca-Cola." When a person at my

(Deposition of I. V. Wood.)

fountain, say ten years ago, would come in and say "give me a 'dope,'" or "give me a 'coke,'" I would naturally know that he wanted "Coca-Cola," and, if he made that request at the soda-fountain, "Coca-Cola" is what I would furnish, and what we do furnish now, in response to such requests. I have never had it rejected on the ground that it was not what was wanted. Yes, sir; I have had a conversation with a representative of the Southern Koke Company. I can't recollect the date, exactly,—sometime about twelve or fifteen months ago, I should think. I do not remember the man's name,—I only know one of the salesmen here, Mr. Mayfield, I believe, here,—and there has been one or two called one me, but I don't recollect the name. Yes, sir, he tried to get me to purchase some of the product of the Koke Company. He claimed that "Koke" and "Dope,"—that they had the copyright name for it, and that it was their product, and, if a man came in and asked for "Koke" or "Dope," why we had a right to sell their product,—that they had a registered name for it, that was my impression, that they sold it under. Yes, sir; I bought one barrel of their product, I think, which was delivered. I think the barrel in which it came,—I don't know exactly, but I believe the barrel was kind of a dark red, or maroon color. It was very much like the "Coca-Cola" barrel in one respect,—across the heading of it was a little bit different, not exactly like "Coca-Cola." No, sir; it did not have a label on it. Yes, sir, I requested it to be shipped without the label.

(Deposition of I. V. Wood.)

It came from New Orleans, La., by freight, and was delivered to my store here in Mobile. The representative of the Koke Company didn't ask me to come out and substitute this product for "Coca-Cola," but he said in the conversation I had with him,—he said, "When they ask for 'Koke' or 'Dope,' [498] why it means that our product is to be sold because we have a registered name. We are sole owners of the name 'Koke' and 'Dope,' and you have a perfect right to serve them and serve our product; and when people ask for 'Coca-Cola' to give them 'Coca-Cola.'" They didn't insist on me serving "Coca-Cola" when they asked for "Dope" but they said for me to use two cans, one for "Koke" and one for "Coca-Cola" and I bought under these conditions—that I use one for "Coca-Cola" and one for "Dope" when they asked for it. No, sir, I don't believe I had ever heard of any product except "Coca-Cola" up to that time under the name of "Koke" or "Dope." "Q. 41. Then the fact that the Southern Koke Company was making a product which they were designating as 'Dope' and 'Koke,' was a surprise to you, wasn't it?" "A. Yes, sir." I can't say whether I bought any more of this product designated as "Koke" and "Dope" by the Southern Koke Company except the one barrel testified about, I can't recollect right now, I wouldn't know it unless I looked up my records. Yes, sir, there was a stock proposition connected with the purchase; there was so many shares of stock with each barrel of the "Koke" or "Dope." Yes, sir, I said something to

(Deposition of I. V. Wood.)

this agent at the time to the effect that I recognized "koke" and "dope" as nicknames for "Coca-Cola." Well, he told me to serve it under the name "Koke" and if people asked for "Koke" serve it—serve "Koke." He said I had a right to serve their product because they had a registered name which was a registration of "Koke." "Q. 47. Anything said about 'Dope' in that connection?" "A. 'Dope,' too, 'Koke' and 'Dope.'" You ask if anything was said about the product being like "Coca-Cola," by the agent; well, I think so, I believe it was supposed to be the same thing. I couldn't say right now whether he said it was the same thing or not.

Cross-examination by Mr. DART.

As near as my recollection served, the "Coca-Cola" barrel was of the same color as the "Koke" and "Dope" barrel; it was similar, dark or maroon color, reddish color, rather maroon color, something mighty close—mighty close to the same color, my best recollection is it was. [499] Yes, sir; I have handled a good many "Coca-Cola" barrels. I don't know whether they are exactly the same color or not, as those I am speaking of, because I never paid very much attention to these barrels, only I know it was a dark-colored barrel, either maroon or a dark red. You ask if the "Coca-Cola" barrel comes in the maroon or dark red; well, yes, sir; that's what I would call it; I am not very good on colors, but the nearest my recollection is, it is—I know a "Coca-Cola" barrel when I see it. No, sir; I couldn't mistake pink for dark red or maroon. Yes, sir; my

(Deposition of I. V. Wood.)

testimony is that the "Coca-Cola" barrel and these other barrels were both dark red or maroon. No, sir; I don't serve any drinks at the fountain myself and haven't done so for years. I only occasionally go back there. I go back there some mornings if I happen to open up before the soda clerk gets down. I don't know that it would be an accident when that happens because it is a very common occurrence. No, I have not handled any other cola drinks in my place—nothing but the "Coca-Cola" and the stuff called "Dope" or "Koke." No, sir; I don't know what people call their particular drinks; I had a number offered me but I never did buy them. No, sir, I don't know what the people would say when they called for them. You ask what is the meaning of the word "dope"; I claim "dope" has two meanings: It is a slang—"the dope on horse-races," "the dope on the baseball game" and different things; but when a man comes to the prescription department, I would think that he wanted a narcotic if he called for a "dope." If he went to a soda-fountain I would naturally think he wanted "Coca-Cola." Yes, sir; I have got the "natural thinking" idea from having it once explained to me that they want "Coca-Cola" when they call for "dope." I can't exactly recollect that I was shocked that he wanted "dope" the first time I heard a man call for "dope," because it has been a common expression of the word, used for a substitute for the word "Coca-Cola"—as a nickname—I don't know which you might call it—since I have been big enough to know

(Deposition of I. V. Wood.)

anything—I have been working in drug-stores since I was ten years old. The idea originated, I suppose, from the conception that he wanted a dope of some sort,—that is, that it had something in it that stimulated or attracted a man [500] and made him come again. No, sir; I don't know how many drinks of "Coca-Cola" per day I served from my fountain, I haven't kept any record of it. You ask if you are to assume that the customers who come in never use the word "Coca-Cola" but always call for either "dope" or "koke"; well, you can watch a customer, sometimes he will come in and ask for "Coca-Cola" and possibly the next day he will call for "dope" and the next day he will call for "koke." I find the average "Coca-Cola" drinkers are liable to call for it under either one of these three names. I will say that there isn't twenty-five per cent of our customers that uses the correct name for "Coca-Cola." Possibly twenty-five per cent of my trade use the correct name and about seventy-five per cent of my trade will call it "dope" or "koke." Well, yes, sir; I think the word "koke" is as prevalent to-day as it was some years ago. Yes, sir; I am the partner of Mr. Albright, who testified a while ago. Yes, sir; I have talked the matter over with him. No, sir; I did not know pretty much what his testimony would be. I knew what he knew, yes, sir; we were both together once or twice when the transaction of this business came up. Yes, sir; we were together when a man named Pierce had been talking to us. Yes, sir; we thought it was serious enough to have a con-

(Deposition of I. V. Wood.)

sultation. Yes, sir; we were anxious not to get involved in this lawsuit. We know the power of the Coca-Cola people and I am making a living out of "Coca-Cola" and my business, together. You ask if it is not a fact that the "Coca-Cola" people look with disfavor on any man in my business who handles the product of a rival concern; well, I don't know, I couldn't say exactly, I have never had any trouble with them. Yes, sir; I would think it a serious blow if the Coca-Cola people deprived me of the right to sell "Coca-Cola." They advertised the product and, of course, to-day, it is, in our business, the man who seeks the advertised product who makes the success. I would want to sell "Coca-Cola," of course, and would rather get along well than be opposed to the "Coca-Cola" people. No, sir; I don't know that there is a great rivalry between these cola drinks. Well, no; I don't know that the "Coca-Cola" people are exhausting the legal machinery of [501] the land to crush out rival drinks,—only, of course, the substitutes. Any man that has got a product that he owns and creates a demand for naturally wants to protect its preparation. No, I do not believe that the "Coca-Cola" people think their drink is the only one that ought to be on the market, and want a monopoly of it. I do know, however, that they are litigating all over the country, but whether this litigation is to crush out rival cola drinks or not, I couldn't say—this case here and one or two others,—I can't recollect them right now,—but I couldn't say. Yes, sir; men like me are very

(Deposition of I. V. Wood.)

susceptible to a lawsuit. No, sir; I couldn't deliberately go into anything that looked like a lawsuit. No, sir; I have never heard of any cola drinks on the market but the "Dope" and "Koke" product. I don't know what names the trade calls for in the other retail drug-stores. I don't know whether or not they call for these other cola drinks under the names "dope" or "koke." "XQ. 60. You don't know whether the names "koke" and "dope" are common nicknames of the trade, do you?" "A. Well, from the training each man in my line has been brought up to he naturally feels when a man comes in and asks for 'dope' or 'koke' they want 'Coca-Cola.'" Yes, sir; I have been in the "Coca-Cola" business all my life and have handled nothing but "Coca-Cola" except this product previously mentioned—and only a barrel of that. Of course, I don't pretend to know what names the trade uses in calling for the other drinks of a similar character. No, sir; I haven't talked it over with my partner at all since he testified here, two or three hours ago. I phoned from the store and asked if he was up here and he said yes. No, he didn't tell me what you had been asking him, only he said he came and made up his testimony about the transaction we had about Mr. Mayfield. You ask if he didn't tell me what he had been asked about "dope" and "koke"; well, he said he had been asked the difference between "dope" and "koke." No, sir; he did not also tell me that you asked the origin of the expression "dope" and "koke." He didn't say anything which

(Deposition of I. V. Wood.)

would communicate to my mind that he had been examined along those lines or along the same lines I have been examined on, but I knew he had, because I knew what it was— [502] knew what he was here for.

Redirect Examination by Mr. ROGERS.

One of the representatives, I don't know which one, told me a man serving "Coca-Cola" under the name of "Dope" or "Koke" would violate the law because they owned the copyright name for "Dope" and "Koke" and a man really ought to serve it when they call for that, because they own it and nobody else. He said something about substitution, but I can't recollect what the conversation was. No, sir; no representative of the Coca-Cola Company ever threatened me with a lawsuit or mentioned lawsuit to me and I don't recollect right now that any such representative ever intimated that I might get into one. No, sir; I don't remember that any representative of the Coca-Cola Company has made any threat. When we were handling this product of the Koke Company of America and had it in a separate container in the fountain and a man came and asked for "Dope" or "Koke" I gave him the product "Koke" or "Dope"—the product of the Southern Koke Company, Ltd., yes, sir. Well, we had that barrel because I was under the impression that they were the sole owners of the copyright name "Koke" and "Dope." "RDQ. 10. You thought you were compelled to do that?" "A. Yes, sir." You ask if I felt that I might be sued if I didn't handle it; well,

(Deposition of I. V. Wood.)

I will tell you, I didn't like to be a substituter and I thought I was doing my duty to do it. Yes, sir; I got that idea from the statement made to me by this representative of the Southern Koke Co. Yes, sir; that I would be a substituter if I didn't sell the product of the Southern Koke Company when people asked for "Koke" or "Dope." You ask what I understood the purchaser meant when he asked for "koke" or "dope"; naturally, as I stated before, if a man asked for "koke" or "dope" I was under the impression all the time that he wanted "Coca-Cola."

Recross-examination by Mr. LITTLETON.

I knew that he wanted "Coca-Cola" because "dope" and "koke" had been common names since I had been knowing it—nicknames for "Coca-Cola" before I ever heard of any substitute or any other preparation with a similar name; ever since "Coca-Cola" was put on the [503] market, and I took it for granted that was what they wanted. You ask if I have ever heard of any other cola beverages on the market to-day; well, I can't recollect the names, but I have heard in a way that there was a lot of other preparations under different names, the same stuff practically that the Koke Company made. No, certainly I don't know what they are, and I don't know what names they are called for by. You ask how do I know when a man asks for "dope" that he don't want "Gay-Ola" or "Rye-Ola," for instance; the only thing I can say— I am not any soda expert, but being connected with the fount the number of years that I have, the word "dope" and "koke" has been,

(Deposition of I. V. Wood.)

I think, used and sold over the counter for "Coca-Cola." Yes, sir; our customers know we are handling just "Coca-Cola," and naturally when they go there they expect to get "Coca-Cola"—that is some of them do, but they ask for "dope" and they expect to get "Coca-Cola," lots of them think it's "Coca-Cola," ninety-nine per cent of them, because they know we are handling "Coca-Cola." You ask me to fix, if I can, the date of the interview with the "Koke" salesman about whom I have spoken; well, now, I can't recollect the date; it was either January —last December, I believe, or some time last year. I can't recollect, it has been several months ago. I couldn't say if it was about the time I got the stuff, I have never looked at the files.

Re-redirect Examination by Mr. ROGERS.

The slip marked Plaintiff's exhibit #100 is an order for a barrel of "Koke" which we purchased from the Southern Koke Company, Ltd. Plaintiff's Exhibit #102 is a carbon copy of a genuine letter that was written. I didn't write it, but my partner did; I seen it on the file. Yes, sir; I remember the letter marked Exhibit #103 and it is genuine.

Re-recross-examination by Mr. LITTLETON.

I said I didn't think there was any label on the end of the "Koke" barrel I got. No, I did not say nothing was marked on it, only I said there was no label on it at all. The only thing I know stencilled on it was the firm of Albright & Wood. I didn't

(Deposition of I. V. Wood.)

notice the stencil on there, where it came from.

(The following depositions were taken in New Orleans, La., on August 4th and 5th, 1914:)

Deposition of M. D. Palmer, for Plaintiff.

M. D. PALMER. [504]

Direct Examination by Mr. HIRSCH.

I live at 717 Howard Ave., New Orleans, La. I have lived in New Orleans about three years. I am a representative of the Sherwin Williams Company, which concern sells paints and varnishes. As such representative, I have had business dealings with Southern Koke Company. I don't remember the exact date, but it was sometime in March of last year, I think, something like that. Yes, sir; I had some business with them about February 13, 1913. The nature of this business was that I was to try to sell them some paint for the barrels there. I went to the Southern Koke Company's place of business on Howard Street near Carondelet and I saw Mr. Scott, who was manager then of the Southern Koke Company. I spoke to him in regard to buying paint and he referred me to the gentleman in the back, who had charge of the painting of the barrels. I went back to see if I could secure some business from him and sold him five gallons of paint. Plaintiff's Exhibit ÷104 is a paper which shows that he bought five gallons of red paint. My company shipped this paint to the Southern Koke Company, which concern used one gallon of it and shipped the other four gallons back. I went around to see what the trouble was

(Deposition of M. D. Palmer.)

and it seems that the paint was not the exact shade he wanted. He thought after it went on barrels it would come out a better shade than it did. He just wanted to know if he could get a red as near the "Coca-Cola Red" as possible. About that time I went to see Mr. Freeman of the Louisiana Coca-Cola people and asked him in regard to the paint they were using and he advised me not to have any dealings with them whatsoever in regard to getting paint as near that shade as possible, that they had a patent on it and their paint was known as the "Coca-Cola Red." After that I had no further dealings with the Southern Koke Company.

Cross-examination by Mr. DART.

Yes, sir; I have a memorandum of the paint that was returned to us, but I couldn't tell you the exact date, I would have to look that up—we keep all such memoranda as those, though. Yes, sir; I will look it up and let somebody here know it. No, sir; I did not receive the paint myself when it was returned, I am not the receiving clerk. **[505]** Yes, sir; I suppose in order to demonstrate who got the paint when it was returned you will have to get the man who received it at our office. I was telephoned to come to get it and I sent for it. I was at the Southern Koke Company when I telephoned to our wagon to come and get it. I believe at that time the paint was something like 70¢ or 80¢ a gallon, so that the five gallons amounted to something like $3.50. The man I first spoke to was Mr. Scott, whom I knew. Yes, sir, I now know that he is dead, but I didn't until just a

(Deposition of M. D. Palmer.)

few days ago. Yes, sir; I claim that I passed back from Mr. Scott to somebody I don't know, in the back. I don't remember his name, no, sir. It seems to me from what he told me he came over here from Dallas to kind of look out for that end and help Mr. Scott out as shipping-clerk—he was painting barrels back there himself, that was the position he was holding, and it was that fellow who told me afterwards that the color didn't suit him. No, sir; I can't recollect his name. No, sir; I did not go to Mr. Scott with the matter after he had returned the paint because Mr. Scott had given him authority about the paint back there. Mr. Scott did that in my presence,—that is, he gave him authority to buy the paint and any materials he would like. Of course, that's just my presumption; I have nothing on which to base it. I didn't feel it necessary to go and see Mr. Scott because he had given this man all the authority to buy the materials and I concluded the authority to buy them included the authority to also return them, and also authority to make the extraordinary statement that I just made, that he wanted a paint that resembled a paint of some other people. No, sir; he didn't tell me to go to the Coca-Cola Company to find out the color of their paint. That was a voluntary act on my part. You ask if it is usual for me to do that sort of thing when customers talk to me about the color of a paint; we try to match some colors when they are not known as patent colors. No, this man didn't ask me to go to the Coca-Cola people. I went of my own volition

(Deposition of M. D. Palmer.)

because Mr. Freeman is a personal friend of mine. No, sir; it doesn't strike me as curious when we arrange the order of sequence of events here—first that I had never sold any paint to the Koke Company, second that I went in there and sold them a five-gallon [506] order amounting to about $3.00 or $4.00; third, that I delivered the stuff; and, fourth, very shortly afterwards I was 'phoned to come and get it; fifth, that there was no condition in our trade that he was to return the goods; sixth, that I went back and got the goods; seventh, that he told me the paint didn't suit. I didn't say that he said the paint didn't suit because it didn't resemble the paint that the "Coca-Cola" people use on their barrels; I said that he said the color was off shade and didn't show up on the color card like it did when it was put on the barrel, and he asked could I get a shade as near the "Coca-Cola" people as possible, and I volunteered to take back this red paint and told him that I would try to go out and match the shade suggested. He told me that it was all right, that it was satisfactory to him, and then, in order to try it, I went at once to Mr. Freeman, who was my personal friend, and told him of this employment of the Koke Company,—putting me out to match colors, to get a color like theirs. Yes, sir; all that happened. You ask if, with all this combination of events, I didn't take the precaution to get the name of the man who had given me this extraordinary order or commission; I have his name in an old memorandum book, I can't call it off just now, that was

(Deposition of M. D. Palmer.)

sometime last year. You ask if I told Mr. Freeman the name of the customer when I told him I had a customer who wanted to match his paint; I told him nothing. I asked him where he got his paint. He said he thought they bought some of it from us in Atlanta, Ga. We have a man that makes that territory. I asked if he could find out about this shade he was using. He asked me why, and I told him I was having some business with the Southern Koke Company and they wanted a color as near his color as they could get. Then Mr. Freeman advised me not to have any business transactions with them whatever, because he stated that they were infringing on their rights, I believe, in using the name "Koke." No, sir; I am not from Atlanta. No, sir; we haven't a house in Atlanta, but we have a traveling representative who makes that territory. I think we have been selling the Coca-Cola Company, but I wouldn't say positively. However, Mr. Freeman told me that they bought some material from us there. No, sir; I was not sufficiently familiar with my business to know that we have [507] been furnishing the Coca-Cola Company with the exact shade that the Koke Company wanted. We have a pretty large concern that has something like 200 representatives and I don't know what everybody else does. No, sir; I am not the head of the concern; I am just their salesman here in the city. No, sir; I didn't look up to find whether we were dealing with the Coca-Cola Company or not. We haven't got records of that kind. From this office

here we sell Mr. Freeman's office. Oh, yes; when I went to the Coca-Cola Company I knew the Coca-Cola Company was one of our customers; Mr. Freeman buys altogether different paint, though, from us. No one told me or suggested to me to go to the Southern Koke Company for this five-gallon order. No, sir; I didn't get any suggestions from the Coca-Cola Company that I might make a sale over there. No, sir; nobody in our office suggested that it might be a good thing to do; I went right from the Southern Koke Company up Canal Street, called on one or two other people and then to Mr. Freeman's office. "XQ. 74. You knew enough about the 'Coca-Cola' business, the minute you got this good piece of news, to go to Mr. Freeman?" "A. I went to match his color, if I could." No, sir; it doesn't strike me as extraordinary that, when I got this piece of information about matching the colors, I, who knew our concern had been selling to Freeman in New Orleans, should head right to the man to whom we had been selling all the time, to learn where he got his paint. It doesn't strike me as somewhat humorous, because there are a number of cooperage places here that all paint their barrels alike. No, you didn't understand me to say that the "Coca-Cola" people here are painting their barrels a different color than in other places. No, sir; I haven't been selling the Coca-Cola Company a red color here. I sell them a yellow to paint the cases with. Yes, sir; I knew the color of the "Coca-Cola" barrels, I knew they were red. Yes, sir; I had to

(Deposition of M. D. Palmer.)

go to Mr. Freeman in order to find out where he got that peculiar shade of red. I went to see if I could get some information from him. No, sir; it is not my custom when I get an order to match paint under similar circumstances to go at once to the concern that is using the paint desired to be matched. Sometimes I ask him offhand where he gets the [508] material—sometimes we get a sample from him to match the shade. I didn't discover that there was a controversy between the Coca-Cola Company and the Koke Company until I called on Mr. Freeman, up there. The time when I called on the shipping clerk for this order of paint is fixed on the bill as February 13, 1913. Then was my first transaction with the Koke Company and my last one. I knew absolutely not a soul in the place when I went to sell the stuff. Under some circumstances a five-gallon order is considered a medium order, but in the company it is considered a very small order. However, in the city we sell all kinds. It was an introductory order. Yes, sir; I suggested that we would like to do business with them. No, sir; I had never heard of these people before I went into their office. No, sir; I didn't just wander in there casually. I was across the street at the Jenkins-Evans Company—it was about the time the Southern Koke people were opening up—as I came from Mr. Jenkins' office I saw the sign. Yes, sir; I knew Mr. Freeman was the head of the "Coca-Cola" people in New Orleans. My relations with Mr. Freeman are not social or intimate, they are just business relations. I don't

(Deposition of M. D. Palmer.)

even go out with Mr. Freeman, nothing like that, we just have a friendly chat now and then, most of the time pertaining to business. You ask if he isn't outside the door now looking at me. He was a few minutes ago, but I don't see him now. Yes, sir; without introduction, without knowledge of the people I was going to see, I called at this establishment and placed this little order for five gallons of paint, and it was the next day, I believe, that we got it back. No, sir; I did not recognize at the time I called on Mr. Freeman, that I had given him a very important piece of information. In fact I never thought any more of it. No, sir; he didn't tell me I had; he never said a word to me. No, sir; when he told me that this red paint was an imitation of his paint, that fact didn't impress me at all, as a business man, that I had given him a very important piece of information. Sometimes, but not often, when I have an adventure of this kind in searching up a color to match where the cooperage companies are involved, as I have stated they are, here, I go to the cooperage companies to find where they get their [509] paint. No, sir; I don't believe I have ever had in my whole life before, that I recollect, an adventure of this particular kind. I have been in the paint business about two years. Yes, sir; I have been in it long enough to know that there is a color called "Coca-Cola Red" and also a "Coca-Cola Yellow," too. Yes, sir; I knew that when I was talking to Mr. Shipping Clerk. Yes, sir; these are two colors known to our trade. Yes, sir; the first 'phoned and

(Deposition of M. D. Palmer.)

left word for me to call up there and see them and I went back in the back and they told me the paint wouldn't do, it was off color, wasn't like the color he thought it was going to be. No, sir; he didn't say it was not like the color he had been getting, but that it was off color and didn't come up to the color card as I had exhibited it. When you put it on wood it doesn't show exactly the same as it does on the color card. The color of the card I exhibited to him was not a "Coca-Cola Red." I sold him a red paint. "XQ. 122. You wouldn't be guilty of selling the 'Coca-Cola Red' to a rival in the trade?" "A. The fact is, I don't know what it is myself." I know there is such a thing, but the orders are sent direct to Cleveland—it is a special piece of goods, I don't know what it is. They order it for the "Coca-Cola" people and call it "Coca-Cola Red." It is their color, and, so far as I know, there is no other color like it in the whole paint trade, but, of course, some other manufacturers might have a paint like it. No, sir; when this man gave me the order I didn't know that he was selling a drink like "Coca-Cola." I saw nothing in their office when I went in to indicate what they were handling, but I did when I went in the back. No, if you open an office, for instance, and I were walking up the street and saw the name "Dart, Lawyer," I wouldn't think of selling you red paint, but I went into this man's office because they had barrels, they shipped out material in them. I knew that because Mr. Scott told me that. Here was an establishment I had never seen before and I

stepped in there at once, apropos of nothing, saw a sign up "Southern Koke Company," which conveyed no meaning to my mind, and stepped in there, introduced myself to Mr. Scott and tried to sell them paint. [510] I saw barrels in the back and asked him where he got his paint and that's how my nose lead me up to my trade. I stepped into a place I knew nothing about, with nothing to indicate that they wanted red paint particularly, introduced myself to Mr. Scott, and then my eye caught some barrels in the rear of the place, some of which were already painted red, but not the shade of red I sold them, and some were not painted at all. You ask if my professional eye did not recognize the paint on those barrels as "Coca-Cola Red"; I knew it wasn't "Coca-Cola Red" by looking at it. I knew that the barrels in the establishment were not the color of "Coca-Cola Red." When I told you just now that I didn't know what "Coca-Cola Red" was I didn't mean to tell you that, I know the shade. One is a darker red and a lighter red. No, sir; "Coca-Cola Red" is not darker, it has a high gloss to it and the paint he had on the barrel was more of a dead gloss. The paint I sold him was a little darker than the one he had. Yes, sir; I am positive that when he gave me the order he said nothing about "Coca-Cola Red" and nothing about "Coca-Cola." It was only when he tried on that order of mine that he 'phoned me to come and get my paint as it didn't come up to the order. He showed me two barrels where he tried it on and it was different from the colors that

(Deposition of M. D. Palmer.)

he already had. The situation the man was in was that after having put the paint that he had bought from me on the barrels, he found he was having two different colors and said he didn't want that shade —and, in fact, he didn't want the shade he was already using. Yes, sir; I just now thought of that last, it just now came to my mind. Yes, sir; he admitted he had made up his mind to change the shade, that is the reason he ordered from me; he was trying to get away from the people he was already buying from. When he saw me—an utter stranger to him —he said he wanted a red as near the "Coca-Cola Red" as he could get. The paint I saw on his barrels when I first went in there was nothing like the "Coca-Cola Red" at all. The sum and substance of it was that I sold an order of paint which was represented to be the same color as he already had on his barrels—that's what I understood when I sold him the order and he told me, when it developed that it was too light, then for the first time he told me he wanted to get rid of the color he was using **[511]** and wanted as near the "Coca-Cola" color as he could get. No, sir; I didn't tell him I knew the Coca-Cola people or that I was going to go down and report it to them. I couldn't tell you, sir, whether our concern is the only one that sells "Coca-Cola Red" in this city. No, sir; I don't know who it was the Koke Company was dealing with that they wanted to get away from. I don't, know, sir whether any other house could sell a red similar to the "Coca-Cola Red" or not. I don't know whether

(Deposition of W. J. Cheevers.)

any other concern carries "Coca-Cola Red" in stock. We don't carry it in stock. Yes, sir; if Mr. Freeman had given me the name of the people from whom he bought "Coca-Cola Red," I would have been very much surprised to find that it was my own concern. If he had done that or had given me the exact information I could have matched the color. When I went to Mr. Freeman, I wanted to get a sample of the material he was using. I couldn't tell you whether our house in Atlanta sells that red to the Coca-Cola people or not, or whether our house, through it's Atlanta people, sells the Coca-Cola Company that paint.

Deposition of W. J. Cheevers, for Plaintiff.

W. J. CHEEVERS.

Direct Examination by Mr. HIRSCH.

I am 42 years of age, and reside at 2023 St. Charles Ave., New Orleans, La. Yes, sir; I was connected with the Southern Koke Company of New Orlean, La. Yes, sir; I was connected with the Southern Koke Company of New Orleans practically from the rental of the building, sometime in October, 1912–1913, until the death of Mr. Scott—three weeks after the death of Mr. Scott, which was May 29, 1913. The Southern Koke Company was doing business in the city of New Orleans, at that time, and at the time I was connected with them. Mr. Scott, when I first became connected with them, was vice-president and general manager. Mr. Scott asked me if he could place a share of stock in my

(Deposition of W. J. Cheevers.)

name for the purpose of completing the board of directors, which share I obtained. I never took any part in the proceedings of their meetings, but I was a member of the Board. I got a postal card one day notifying me of a meeting. Mr. Scott lived with me from October until April of the following year, and in that time I was with him from morning until night, almost continuously. The capacity in which [512] I did work for the Southern Koke Company was that I was a salesman, supposed to take care of the saloon trade—get "Koke" introduced into the city of New Orleans. I was a free lance. You ask if I ever had any discussion with Mr. Scott in regard to "Coca-Cola" and "Koke"; well, we had innumerable discussions. I can't say just right off, any particular one, but we had so many—for instance, there was one where I spoke to him about the unfairness of the business that he was going into and his wife tried to dissuade him from going into it. I asked him if he didn't think it was unfair to be trading on the advertisements and money spent by another concern and he said he did, that he got into the thing over in Texas, wherever he had met those folks, the Koke Company of America—and they had taken him around, he had been at different soda fountains, and he found whenever a man wanted "Coca-Cola" he would invariably ask for "koke" and he saw the value of that as a chance to make money. When I first started out as a city salesman, Mr. Scott furnished me with an affidavit signed by Mrs. Pemberton—she was the widow, I believe, of

(Deposition of W. J. Cheevers.)

the original owner of "Coca-Cola"—in which she stated that Mr. Mayfield was familiar with and knew the original formula of "Coca-Cola" and was qualified, in her opinion, to manufacture it—something to that effect—if you have one here I will identify it. Mr. Scott told me the only difference between "Coca-Cola" and "Koke" is a slight percentage of celery, which was added to cover the patent or copyright laws. Yes, sir; I am familiar with the time that they first commenced bottling the product that they called "Koke." This bottle was not labeled. I told Mr. Scott that the bar-tenders generally,—the trade generally—they were complaining about the bottle not being labeled because there was not similarity between that and the Coca-Cola bottles; Mr. Scott said he would order labels and asked me if I would go with him to Houser's Printing Office—the legal printers. I went with him and we met Mr. Speyer there. Mr. Scott had the cuts, I suppose there were about a dozen, and he told him he wanted him to make him up 50,000 labels like that—said that he **[513]** wanted them about the color of the "Coca-Cola" label. A question arose about the color of the back-ground, whether it was purple or black. My idea was that the inset,—the "Coca-Cola" inset,—was red, always, for some reason or other. I said that to Mr. Scott. He said, "Well, you get a bottle from the corner, buy a bottle of 'Coca-Cola' and bring over here and we will see." So I brought it back and Mr. Speyer and Mr. Scott and all agreed that the color of the "Coca-Cola"

(Deposition of W. J. Cheevers.)

label was a dark purple or a dark blue—anyhow they agreed on the color, that was the color that he wanted, and he told him to make him up 50,000, I think, to simulate the "Coca-Cola" color. Yes, sir; those labels were delivered. Plaintiff's Exhibit #105 is the label referred to. Yes, sir, these labels were used; a number of them were delivered to the American Bottling Company, who were then bottling "Koke." Yes, sir; after I severed my connection with the Southern Koke Company I had a conversation with Mr. J. C. Mayfield, Sr., on, I think, three occasions. One time, I believe that—not after I severed it—once after I severed it—Mr. Mayfield telephoned me one day and told me he had a letter from Mr. Homer Scott and that Mr. Homer Scott would be in the city and why didn't I come down to the office. I went down to the office and he asked me if I had ever sold "Koke" for "Coca-Cola"—if ever I had substituted. The question was unexpected; he brought me down on a false pretense, and I told him, "No," and he wanted me to sign an affidavit to that effect. He had the jurat on the end of it, but I refused to sign it. The affidavit was testifying to the fact that I had never sold "Koke" for "Coca-Cola." You ask if the affidavit was true; certainly it wasn't true, I would have signed it if it had been true. I accompanied James Cain, S. Friend and B. J. Gillon, to the saloon of Thos. Rausch, corner of Clouet and Rampart Streets, in June, sometime, about fourteenth or fifteenth, but the exact date I won't be sure of. Cain asked Rausch

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if he remembered his coming in there and selling "Koke." Rausch said he did. Cain then asked him if he remembered the representations that he had made at the time to effect a sale. He said,—I had nothing to do with it, Mr. Dart, I was simply a witness,—Cain asked Rausch if he told him he could sell "Koke" for "Coca-Cola." Rausch said "Yes. I remember the talk that he made at the time." **[514]** (Defendants object to the alleged conversation between Cain and Rausch because mere bar-room gossip and hearsay. Overruled. Exception.) Yes, sir, about the same time I accompanied Jas. Cain, S. Friend, and B. J. Gillon to the saloon of Ed. Morero. I heard the conversation between them at this place, and it was along the same lines. Cain asked Morero the same questions and elicited the same answers. Yes, sir, I was in the place of business of the Southern Koke Company all the time, in and out all the time. You ask if I was ever in there when they had any "Coca-Cola"; when they made up the first batch of "Koke." Young Mayfield had a bottle of "Coca-Cola" syrup. The following day—I think it was the next day—Mr. Scott mixed some of this "Coca-Cola" syrup—the "Koke" wasn't then ready, and we had it to drink; and I asked him the purpose of having the "Coca-Cola" syrup and asked him why he had sent out and purchased "Coca-Cola" syrup. Young Mr. Mayfield said it was for the purpose of testing and I presumed that was to get the weight and the body and the color to make comparisons between "Coca-Cola" and "Koke." You ask if

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I ever had any conversation with Mr. Scott in regard to the paint being used; I worked for Mr. Garlick here, who was in the advertising business, and they used great quantities of paint; I noticed Mr. Scott was using ready mixed paint and I mentioned to him that I thought he was working at a loss by using ready mixed paint, when he could have the colors and mix it himself. I mentioned it to him on another occasion. He came home very late one night and said that he had been around to try to get this particular color of paint and that the only place he could get it was at Lee Circle, that was the only can of this particular color he could get. I then asked him the reason and again mentioned to him that I thought there was an extravagance that perhaps he hadn't realized and he said, well, they had to get this particular color on account of the "Coca-Cola" barrels—that they had to be similar—that's the truth, Mr. Dart.

Cross-examination by Mr. DART.

Before I began as seller of "Koke" I was transcript clerk in the district court. When I left there I went with Senator Jennings Garlick in the advertising business, **[515]** I think that was in 1902. Before I began as transcript clerk I worked for nine years for the Southern Telephone & Telegraph Company from messenger-boy to complaint clerk under Mr. J. J. Fowler, who is now Secretary of the Board of Civil Service Commissioners. I also worked as train auditor for the S. P. Railroad Company for about three months—until they discontinued the service. That was in 1910. After that,

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I was in the saloon business as proprietor at the Faust Hotel—the only man that ever made a success of it, Mr. Dart. After that, I worked for the Koke Company for about nine months. I am now forty years of age. I was with the Koke Company from October, from the time Mr. Scott returned from his California trip, until about three weeks after his death, which occurred on May 29, 1913. I was there in October 1912. Mr. Scott was boarding with me at 2023 St. Charles St., where I had been living seven years. Myself and my wife kept a boarding-house. I didn't keep a general boarding-house, but we did take some nice people. Mr. Scott was there from October until about three weeks before his death. Yes, sir, he got acquainted with me simultaneously with becoming a lodger in my house —no, two or three weeks previous to that, we first became acquainted with his wife through Mrs. Earhart. At that time I was doing nothing—unemployed at the time. At that time the Koke Company had begun it's operations and was a going concern. Mr. Scott was around selling stock, the organization was practically formed except there was lacking one member of the Board of Directors to complete it's organization. He had been on a trip to California and stopped in Texas on his way back, as I understand it from him. At that time the Koke Company had no location; during my acquaintance with Mr. Scott he rented the building at 807 Howard, from Sol Weil. Yes, sir; I went in with him then, I was with him all the time. I

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worked with him from morning *un time* night before its organization. I went with him when he went around buying the machinery, leasing the building and looking over headquarters around town here. He did not have anybody else with him. He and I did the thing alone. Yes, sir; he was engaged in the organization of the Southern Koke Company—rather he had it organized, they had no stock sold—never have sold any stock that I know of—but he was then prepared to do business. **[516]** I went in there as a sort of general handy man. He wanted me to go out on the road as a salesman in the beginning, and I refused because I didn't think I was qualified. That was before they began to make the drink in New Orleans. Then they began to make it here. No, sir; they didn't ship it from some other place. The product I first knew of from the time of the organization of the Company, the syrup was shipped from St. Louis and was mixed on Howard Avenue after the tanks were put up. I never saw the syrup made, that was made in St. Louis, as I understood it, but it was brought here in barrels and mixed on Howard Avenue and sugar added to it. It was then sold in barrels, half barrels, all size barrels. I didn't say I saw Mr. Mayfield, Jr. doing anything with a small bottle of "Coca-Cola," Mr. Dart, I said there was a small bottle that he had bought, or something, that young Mr. Mayfield had, a small bottle of "Coca-Cola" syrup—it may be that Mr. Scott bought it, I don't know that Scott did it, nevertheless, in those headquarters there was a

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small bottle of "Coca-Cola" syrup or extract, one day Mr. Scott poured out—, You ask if I am sure it was a syrup; he told me it was and I have never had reason to doubt his words. No, sir; it was not one of these bottles (indicating a bottle); it was syrup, we never used those bottles. This syrup was in an ordinary flask like,—I suppose it was like a whiskey flask. I don't know whether it was or not, they may have used it for gin, they put that up the same way. No, sir; it never had any name on it. It was in a white flask with no label on the bottle. I was told that it was "Coca-Cola" syrup, by Mr. Scott, the manager of the Southern Koke Co. Yes, sir; I hadn't told that part of the story before. Mr. Scott told me that Mr. Mayfield used that for testing purposes; what he meant by testing purposes, I don't know. I won't be sure whether Mr. Mayfield was there or not at the time he said that; I can't say that he was, but I know that he did do so. I am very well aware of the fact that Mr. Scott is dead. I was with him when he died. Young Mr. Mayfield, I don't think, was there at the time Mr. Scott told me that, but Mr. Mayfield handled that bottle because I saw it in his hand. Yes, sir; it was Mr. Scott who told me that the bottle contained "Coca-Cola" syrup. Yes, sir; I tasted it and it tasted like "Coca-Cola" only it was in uncharged water, it was [517] only ordinary river water. Curiosity lead me to taste it, the same as would get you. Yes, sir; we get down to the point that the syrup was in a white flask, unlabeled and Mr. Scott told me, at some time—I am

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not willing to swear in the presence of Mr. Mayfield, that it was "Coca-Cola" syrup and I eventually tasted it and it tasted like ordinary "Coca-Cola," only uncharged. Mr. Scott told me it was for testing their syrup—there was no "Koke" at the time this happened—that is, there was none turned out at that tank. No, sir; Mr. Mayfield himself never did volunteer the information to me that that was "Coca-Cola" syrup. So far as he was concerned I have no information as to what was in the bottle because he never told me. No, sir; no other living person ever told me what was in that bottle. It is a fact that the matter lies between me and a man who is dead. No, Mr. Dart, I want to corect that; a sergeant of police came in one day afterwards and I think that the similarity between "Koke" syrup and "Coca-Cola" was shown to him—I presume the sergeant would be a witness here too, I won't be positive—there may be another living witness. No, sir; I don't know whether he is going to be a witness or not. I am not in the counsels of the Coca-Cola Company and have no idea what has been done. No, sir; I don't remember the name of the sergeant, he is a member of the city police here, but what his name is I don't know; I will locate him if you want him. No, sir; I have not talked to him since the time he went in there nor did I call his attention to the similarity between "Coca-Cola" syrup and ours. I don't know anything about who did call his attention to it. Yes, sir; I did say his attention was called to it and I knew one day he did go back in the mixing

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quarters and there was some mixed back there, but who was there, whether Mr. Mayfield or the darkey or who, I don't know. You warn me I am exciting myself and exhausting my vitality in saying things nobody has interrogated me about; I tell you I pay for my exhaustion—mental—yes, sir. You say you are anxious to know how the attention of the sergeant was called to this similarity in color; because I happened to be present, but my memory is not fresh who was there. I can't be sure, I couldn't know whether Mr. Mayfield was there that day or not, but I know that he did take both kinds, and the question of the **[518]** similarity brought to his attention—the sergeant drank of both to show the difference. Somebody gave the sergeant a drink. Why, the sergeant had no purpose in calling on us. He came in and I gave him a drink, yes, sir. No, sir; I didn't. It was given him by whoever was in charge of the place. No, sir; I don't know who it was who gave him a drink. No, sir; there was not another living person connected with the Koke Company who ever told me what was in that famous flask outside of the dead man, Scott. I haven't seen this police sergeant for a year or eighteen months. No, sir; when I last saw him I did not talk to him about this drink "Koke." Why, I think I mentioned this sergeant of police incident to Mr. Hirsch, but I don't believe I told him the name. He is the only one that I ever know of having mentioned it to. No, sir; I do not know a man named Pierce. No, sir; I have not talked to anybody who didn't

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give me names, representing the Coca-Cola Co. Yes, sir; I told this police incident to Mr. Hirsch, too, like I told it here. To go back over it again, what happened was this; the policeman went into the shop of the Koke Company and got a drink—two drinks—a "Coca-Cola" drink and a "Koke"—and Mr. Scott invited him to take it, but who was back there when they went back, I don't know. Yes, the dead man invited him to take it, he ran the works, the dead man. They got the drinks in the rear. I don't know what happened back there. They got up a discussion about the difference between "Koke" and "Coca-Cola." That story of the policeman had nothing to do with the syrup in this flask; they had drunk out of that syrup. Yes, sir, they drank some of the syrup out of the flask. We never had bottled "Coca-Cola" around the place. You ask if I saw the policeman get his drink that day; there was nothing to prevent me, the place was all open, nothing to prevent me seeing—and I happened to be looking—I am always looking. Yes, sir; I am always on the qui vive, I saw the policeman take two drinks, not out of the flask, but the hose was pretty free—if you want it in detail—then they poured some syrup out of one bottle and tasted that, and then tasted the other, as I remember, that is, the "Koke" syrup. I don't think this happened fourteen months ago. Mr. Scott died in May 1913, and we are now in 1914—it was just previous to that. You say **[519]** I am a little behind, that, May, 1913, is considerably over 14 months ago; well, it is 14 months ago. No,

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it didn't happen the day Scott died, it was just previous to that, may be perhaps a week. Coming back to our policeman a little while, I saw him go in the works. They were about twenty feet back of the office and I was about twenty feet from the policeman. Yes, sir; I was watching that thing, naturally,—nothing else to do. There was no business, just waiting for orders. No, I have no idea why that policeman came in, noboby sent him, he was just coming along. I suppose it was just the policeman's habit of going where there is a drink. I saw Mr. Scott, who is dead, mix a glass out of this flask containing the "Coca-Cola" syrup first, then he made another drink out of the "Koke" syrup in another glass; and the policeman tasted them both. No, he didn't drink them. I haven't seen any difference between "Coca-Cola" itself and the "Coca-Cola" syrup, I can't detect any. Then the policeman came back and Scott and the policeman talked about it, and I heard the conversation, which was to the effect that there was no difference, and the policeman said that's the same as "Coca-Cola."

Now coming back to my employment. The establishment opened for business, I think, sometime in November 1912. Scott held off sending his men out, so he figured, the middle of December was coming on, Scott did; I don't know exactly what date he started them out, I wasn't manager, I was simply salesman. Yes, sir, in November we were on Howard Avenue. In that shop which was opened, there was Scott and myself and Mr. Mayfield's son,

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J. C. Mayfield, Jr. all the time, but there was nobody else. They started first to buy some barrels—got the tanks up first, then bought the barrels. The syrup came in and they mixed it with sugar, added the extract that they had received from St. Louis, and added the glycerine, and then went ahead. They didn't carbonate it; it was sold in extract, to the American Bottling Company at first, and, afterwards, to the Crescent City Co. About that time I was sent out to attend to the saloon business. I think it was later than October or November, I won't be sure about the dates, I can't call that to mind because I have no memorandum of that fact, but during the course of **[520]** my connection with them, shortly after I began to see the city trade, I mentioned to Scott that the bartenders complained that there were no labels on the bottles they were putting out. You ask what the Koke Company had to do with the bottles ; well they were responsible, we were supposed to guarantee them the city trade—I was working for the Southern Koke Co. While it is true that the bottling company attends to the bottling, nevertheless they guaranteed to the bottler that they would work up a trade and those bottles had no labels on them. Then came the discussion of making the label. I mentioned that the trade, the bartenders, complained that there was no label, that they wanted a label so it would look similar to "Coca-Cola" packages, that was the object, that's what they were working for. No, sir, I couldn't tell you some of the bartenders who told me that; I am not

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working for the Coca-Cola Company or the Koke Company and I am not giving up my time working up details of it. You again call my attention to wearing out—exhaustion; and I again tell you I pay for it. No, sir; I couldn't give you the names of some of the bar-keepers who suggested that they wanted an imitation label. No, I couldn't give you the name of one of them. No, sir; I couldn't tell you the bar-room in which they were. You ask are they all dead too, those fellows; they may be, I haven't been around to see them. No, sir; I can't remember the name of a man that suggested to get up this counterfeit label. "XQ. 195. Anyhow, you brought back the message of the bar-keepers that they wanted a label that looked like the label of 'Coca-Cola' packages." "A. No, they said they wanted a label on it; I told them there was a label similar—and Mr. Scott told me the Texas label was similar—he already had the cuts of the label in his possession." "XQ. 196. Which is true, Mr. Witness, that the bar-keepers told you that they wanted a label imitating the 'Coca-Cola' "—"A. Yes, sir; —they didn't say that they wanted to imitate 'Coca-Cola,' they wanted it to look similar, so that they could put it across the bar for 'Coca-Cola'—that's my language, Mr. Dart." Yes, sir; I still stick to that testimony. I saw the cuts, some of the cuts of the labels. Yes, sir; I knew they were in existence —. Some of the cuts for the labels I have identified. The label on Plaintiff's Exhibit #105 looks to me like it is made from the cut. **[521]** I presume that

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cut was in existence before I began to go out and sell "Koke" to the trade in New Orleans, Scott had some made at Romanski's and some old ones. He must have had some made at Romanski's prior to beginning work in New Orleans because when I made the request for the labels he had them produced. Romanski made some of the cuts—made pretty near all of Mr. Scott's; but he had some, I suppose you would call it pattern cuts, from Texas. I suppose that was the model on which all of the cuts were built. So far as I know Romanski is the only man that made any for Mr. Scott. Romanski is an engraver and he hired a label firm on Canal Street to print the labels. Then Scott and I went to Houser to get the labels. I walked over there and found Mr. Wm. Speyer the foreman. Mr. Scott told him that he wanted, I think it was 50,000 labels, showed him the cuts and told him he wanted them the colors of the "Coca-Cola" labels. Mr. Scott said that to Mr. Speyer, that's my recollection of it. My idea was that the insert "Coca-Cola," was in red. Mr. Scott and Mr. Speyer were talking about the color of the background, whether it was black, dark purple or blue. Both of them were printers and used more technical language and finally Mr. Scott told me to go to the corner and buy a bottle of "Coca-Cola" at the saloon and bring it over here. I brought it over and gave it to Mr. Speyer. They examined it and I believe they decided it was a dark purple—I am not sure whether it was dark purple or dark blue. After they got finished I gave the

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"Coca-Cola" to the stenographer and she drank it. I guess the bottle is laying around there yet. "XQ. 218. The object of the testimony you are giving, as you understand it, is to show that in your presence Scott and Speyer—the printer of Houser—had in their hands a bottle of "Coca-Cola," with this label, and that they were trying to get, in type and in color and in shape, a label as near as possible to the 'Coca-Cola' label; is that what you are trying to tell us?" "A. That's Mr. Scott's orders, to get it as near like the 'Coca-Cola' label as possible." Speyer is still living and is the manager for Houser's. I don't know anything about whether he has been seen in connection with this or not. I can't say that Plaintiff's Exhibit #105 was turned out as a result of this conversation, but a label similar to that was turned out—50,000, if I remember right—McCarthy Moore's name was on there, he was president then —there has been two presidents since then. [522] I don't know what color this label is. I think Scott and the printer said it was a dark purple, I am not sure whether dark purple or blue. No, sir; I am not able to state whether the color of the label on Exhibit 105 is blue or black. I am not color blind, but I can't tell whether it is dark blue or purple. The labels came in due time and were delivered to the Koke Company, Mr. Mayfield, Sr., or Mr. Boyd was there and passed on them and said they were all right. They said over in Texas they didn't use labels because the bar-tenders all complained that they clogged the drains in the ice boxes over there.

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Yes, sir; I went out selling "Koke" for these people as their principal salesman in this territory. I believe I sold a lot of it. I told the bar-tenders whom I saw anything to effect a sale. Mr. Scott was frequently with me when I effected a sale. No, sir; I did not tell them it was "Coca-Cola." My first argument was to patronize home industry, that this was bottled here. Sometimes they would say "Well, you know the folks want what they call for, they want 'Coca-Cola,' and we can't put that across." I told them then that the label was the same and that the product was the same, that it was made by Mr. Mayfield and I showed them this affidavit of Mr. Pemberton that I had, showing that he could make the same syrup the Coca-Cola Company makes. You ask if I then suggested to the bar-keepers that they could sell it; that was up to themselves. I told them what they could do, there was a similarity of labels there, that it looked like the "Coca-Cola" package, made by the same man, that we had an affidavit to that effect from Mr. Pemberton to prove that he could make "Coca-Cola"—that this was "Coca-Cola" with the slight addition of celery, and explained to them as I have explained to you, that the addition of the celery was only put in there to overcome the patent laws and Scott, whenever he was present, would always say "that's good for the nerves." Having fertilized the ground, so to speak, by telling these bar-keepers all I have just told you, I balked at suggesting to them to commit the actual fraud—I never advised them to commit the actual

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fraud. "XQ. 242. You mean you advised them to commit the act of fraud?" "A. No, sir; I certainly did not." My conscience wouldn't stand for that. No, sir; I never thought that, by suggesting to a man how to commit a fraud, it would require nothing **[523]** further from me to do the fraud; I wasn't lawyer enough to do that, I never thought of that, I sold "Koke" around here on my own personality. You ask me if either Scott or I suggested to these people to sell "Koke" as "Coca-Cola"; I don't know what Scott done. I can answer for myself only. Oh, no in my presence he never did suggest to a man to sell it for "Coca-Cola," I never heard him tell a man to take it and sell it for "Coca-Cola." Answering your question, he may have said he could sell it for "Coca-Cola" but I didn't take any notes on Mr. Scott's conversation, I kept no diary of that. I don't know whether it occurred or not. In any event I am not willing to swear that I heard Mr. Scott tell any of these people that they could sell it as "Coca-Cola" and I don't believe Mr. Scott would tell them that. I think he was too much of a white man to do that.

I worked for the Koke Company about three weeks after Mr. Scott's death. Col. Jas. Wright was then acting in every capacity. He is alive and is Secretary of the Pan American Insurance Company. He told me not to do the city trade any more, that he had brought a man here named Dalton, to succeed Mr. Scott and asked me to go with this Mr. Dalton and sell stock to my friends, to all my selling friends

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around here. Well, I didn't do it and I never went near the office any more. Yes, sir; I quit, I simply kept away. I wasn't going to go around here and sell my friends $25.00 worth of stock and stick them with a concern of that kind where the widow had got the worst of it and everybody else. By the widow, I refer to Mrs. Scott. Yes, sir, I believe she was present at some of these interviews between her husband and me. She was not present at all of them, but she heard a great many of them. She tried to dissuade Scott from putting up any more money to keep it going. She didn't like the line of business—just why I don't know, but she thought it was going to bring him in contact with the saloon trade. She didn't realize at the time there would be another bottler. He was a practical printer and if he was going to invest his money in anything, she wanted him to go into that. That was the objection. He told his wife what I told you awhile ago about the soda-fountains and the continuous calls for "Koke"—instead of giving them "Coca-Cola" they would give them "Koke"—and all the money that there was in it. You ask if I want you to understand that he had explained to his [524] wife in my presence that it was a sort of common swindle; I didn't call it by that name, you can call it that way, but I can bring a dozen witnesses to prove that he did. If it is a common swindle you can take it that way. Yes, sir, Mr. Scott explained to his wife that this was a straight out fake he was in—if you want it that way—unfair competition, fake, unfair competition. I don't know where

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I first heard that word, unfair competition, maybe I read it in one of your briefs when I was down at the court. No, I am not in the habit of reading your briefs. I don't mean your briefs either, but your cross-examination. I am proud of it, too. You ask me again if I think I heard of that word "unfair competition," in one of your briefs; I didn't say it was yours, I say I may have read it in one of your briefs. I appreciate the value of an oath and what I am stating is the truth. You asked me where I had heard that word "unfair competition" and I told you it may have been in one of your briefs. You say that the word "unfair competition" is an unusual word for a layman to be using and you ask me again if I still think that I read it in one of your briefs; I didn't say I did, I said maybe I had—I don't know where I read it, perhaps I read it in the newspapers. No, I didn't hear it the last two or three days talking to Mr. Hirsch; I haven't been talking to him that much; nor talking to the detectives of the Coca-Cola Co. No, sir; I didn't get the word like we get our features, and habits and forms and faces, by heredity, nor did I get it out of one of your briefs. I do a little reading, Mr. Dart, I don't have to depend on the Coca-Cola Co. I don't know where I got the word.

Coming back to Mr. Scott and Mrs. Scott's family conversations, all those conversations took place at the house. Sometimes she came to the office and sometimes they took place up at the house. But those confessions of guilt and stirrings up of conscience

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occurred at home mostly. No, sir; they never had these conversations at the dinner table, I never ate with them. They talked together mostly in my kitchen. Mrs. Scott came to me and told me in the very beginning what Mr. Scott had invested in and asked me what I thought. I told her I didn't think it was going to be a paying proposition, in New Orleans, there were too many bottling companies here. He said she didn't want him to go in anything like that and he had went and put up $5,000 in this thing and he [525] was a printer and she wanted him to start a newspaper; she thought that may be this business would bring him in contact with the saloons—she asked my opinion of it and I told her I didn't think it was going to be a paying enterprise, and Scott told her about being in Texas and around the soda-fountains here and noticing that when they wanted "Coca-Cola" they would say "Give me Koke" and he put in time day after day at the soda-fountain before he invested this money. That was the way he assured her. Now, I wasn't the only one heard these arguments come up, there were several people around the house. I don't know that that is all he told her, but that is all relating to that subject that I can recall to mind. You ask if I mean to say from this that he was telling her this was a fake, an imitation and a fraud; you call it by fraud—no, he didn't feel safe about it, that it was a good clean open and above board proposition. No, sir, he didn't. He told me that his conscience hurt him after he had put up the $5,000. No, mine didn't hurt me, I didn't put up a

dollar. In any event, Mrs. Scott tried to keep him out of this fake swindling business, but she didn't succeed. Mrs. Scott tried to dissuade him, not on one occasion, but on several occasions, from going into this business. These happenings all occurred at the house, and it was at the house that I heard her tell him what I have told you. No, sir; he didn't say that this business was a fake nor did he ever say it was a swindle. He asked me about unfair competition—no, sir; he never asked me about unfair competition, he got to talking about his general business, had the dumps—as soon as he got the thing going he was going to unload, he didn't feel right about it himself, that he considered it unfair competition—that wasn't the exact language he used, it was similar language. Now, this conversation occurred at night on the street with just he and I present. Yes, sir, I am reminded that he is dead and that you have no way of contradicting that. This occurred about 7:30 or 8:00 o'clock at night when we rode down to the office.

Coming back to Mrs. Scott, Mr. Scott explained to her that the reason for his investing his money in the Southern Koke Company was that he had been in Texas at different soda-fountains, that he had been out in New Orleans at soda-fountains and had watched and noticed people who wanted "Coca-Cola" would invariably ask for "Koke," and it was on [526] the strength of that imitation—if you are pleased to call it, or whatever you call it, that he put his money in it, that he wanted the profits off of other

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men's mistakes. Yes, sir; he told Mrs. Scott that it was on the faith of that imitation, not in my language though, he didn't call it "fake"—you can take whatever interpretation you want to. Yes, sir, Mr. Scott, in my presence, told his wife that he had put his money into that concern after he had watched the soda-fountains in Texas and elsewhere and found the people were calling for "Koke" and "Dope" and getting "Coca-Cola" and he felt that this was going to be a good investment on that account. He felt it was going to be a good investment to put his money into a thing called "Dope" or "Koke" with the idea of getting that trade. Yes, sir, that is what he told her. I don't know when those conversations occurred between Mr. Scott, myself and Mrs. Scott; it was any time between October, 1912, and March, 1913. Yes, sir; Mr. Scott was a gentleman, an honest man, and, so far as I know, a good man, and I don't think he would be capable of committing a wrong. Yes, sir; I went to a man named Rausch and another man named Morero in company with Friend, Gillon and Cain. We three went to Rausch and the same three went to Morero. It's only a distance of a few blocks. Rausch's place is at Clouet and Dauphine Streets and Morero's is at Montague and Dauphine. We four went to Rausch's place between the 13th and 15th of June, 1914, and on the same date went to Morero's. Cain, who was formerly a solicitor for the Koke Company, went down to Mr. Rausch's and asked Mr. Rausch if he remembered his having called on him to sell him "Koke." Mr. Rausch said, yes.

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Cain asked if he remembered the argument that he had advanced to effect the sale of Koke. Rausch said, yes. Then Cain said "You remember me telling you it could be used for 'Coca-Cola'?" Rausch said, yes. That was the substance of the conversation and the same thing occurred with Morero. I understand that Cain was thereby telling Rausch and Morero respectively, in the presence of two witnesses, that he, Cain, had told these men that he could use "Koke" as a substitute for "Coca-Cola." I understood that was the object of that visit. Yes, sir, that was contrary to anything I had done while I was a solicitor. No, sir, I would not do any such trick as that while I was a solicitor—I didn't do it. [527]

Friend and Gillon, I think, are representatives of the Coca-Cola Company, I don't know whether you would call them detectives or not. They told me they were representatives of the Coca-Cola Company to make an investigation of substitutions. Cain is now night watchman for the L. & N. Railroad Co. No, Rausch did not say that he was substituting it, Cain didn't ask him that far, just asked if he remembered it and giving the order and the language he used. Yes, sir; Morero also remembered it and said, "Yes," to Cain's question. Yes, sir, at Morero's, I believe I had a bottle of "Coca-Cola," there was no "Koke" drunk, I would have drunk that, the others drank a small glass of beer. I got acquainted with this man Friend just a day or two before that. He found me at home at 2023 St. Charles St. and introduced himself to me. That is not the first time I had ever seen him.

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I think Mr. Gillon first asked if I had any objections to seeing Mr. Friend and I told him, no. He told me Mr. Friend was at the hotel Monteleone and asked if I would go down and see him. Gillon introduced himself to me. I presume he located me from the city directory. He told me he was representing the Coca-Cola Company and that Mr. Friend, the representative of the Coca-Cola Co. was here and asked would I call on him at the hotel Monteleone. Before I went down Gillon asked me if I had any objections to tell him the name of the employees of the Southern Koke Company, while I was in their employ, and I told him I had no objection in the world. He knew I was out of their employ then. I didn't have any talk with Gillon, except he asked if I would come down and see Mr. Friend. Previous to this time nobody that I remember of talked to me about the same subject matter. You asked if I made any secret of my connivance with this desperate fraud going on here; I never connived at a fraud in my life. I don't know whether what I have been talking about was a fraud or not, the Court is going to say that. I never said anything about my conscience hurting me. You ask if I believed it was an honest piece of work I was doing; I was getting $75.00 a month out of it and honestly earned it. No, I did not tell you I saw Mr. Scott imitating "Coca-Cola." I told you he was calling attention to the similarity of "Coca-Cola" syrup to their syrup. [528] I never saw him substituting anything. Yes, sir, I called the attention of the bar-keepers to the fact that "Koke" was similar

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to "Coca-Cola." You ask what was my idea in telling them that; why, certainly, that's fair enough, tell them it's as good as "Coca-Cola"—sure, I was honest enough to draw my money and spend every dollar I got for the advancement of the Southern Koke Co. I never brought a dollar home in my life and that's how honest I was. Yes, sir, I thought it was honest to take this stuff to the bar-keepers and tell them what I have been telling you; namely, that the stuff tasted like "Coca-Cola," was the same as "Coca-Cola," was as good as "Coca-Cola," that there was no label on the bottle—I showed them that the label looked like the "Coca-Cola"—also the thing on top and also that the bottle looked like "Coca-Cola." You ask if, having shown them all those things and having lead the horse up to the water, I didn't ask them to drink. Oh, you bet your life they always drank and Mr. Scott was right there when I advanced my argument. Yes, sir, I considered that was an honest man's honest actions. Yes, sir, I then went with Scott to the printer and went out and bought a bottle of "Coca-Cola" at his order. Yes, sir, I heard him tell the printer to substitute the color and everything else as near as he could to the "Coca-Cola" style. Yes, sir, I thought that was honest at that time. Yes, sir, I know now from my conscience, that if that is an exact reproduction of the "Coca-Cola" label, it is wrong, that they have no right to masquerade this stuff as "Coca-Cola" if they don't make it as "Coca-Cola." Yes, sir, it required something more than my first breath of honesty to know that it was wrong.

(Deposition of W. J. Cheevers.)

Mr. Scott wanted me to go on the road in the very beginning and I absolutely refused and the only way he ever got me to go out and sell "Koke" was by telling me of the ill-treatment,—he told me the way they worked on the conscience of everybody they wanted to work—that Mayfield had been robbed by the people who finally purchased the "Coca-Cola" and this was doing no wrong to people who had robbed somebody else. Yes, sir, Mr. Scott salved my conscience by telling me of the hideous outrage perpetrated on Mayfield by these "Coca-Cola" people. He told me that Mayfield had worked for old Dr. Pemberton, that the formula was put up for sale and I believe finally sold for something like $1,300, and that he had been double **[529]** crossed, got the worst of it and suffered and had given up his life to going around—had made a sacrifice of himself getting even with the Coca-Cola Company, that's the way he enlisted my sympathy. "X. 429. Then your sympathy is enlisted with anybody crying out for vengeance, although he had no cause for vengeance"? "A. That's it, that's why I am here." No, sir, I am not getting vengeance on the "Koke" people, square deal and honesty. My idea is to rectify the wrongs I did unconsciously, if you want to put it that way. Yes, sir, now out for a square deal and honesty. You say the honesty being to get the Koke people in the hole after I had honestly tried to beat the "Coca-Cola" people; well, I knew a letter was sent to Mrs. Scott—I knew up to that time there was not a dollar of anybody else's actual cash in there except $200 of the

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Maytrag's money. I knew Scott bore a burden—his wife told me they got her to sign over his entire stock to them. Nobody had put in a dollar and Scott was the only sufferer. You ask if I am out to rectify that injustice; I am not out to rectify anything, I am here to tell the truth, no matter who it hurts. I know nobody connected with this concern. When I said a while ago I was out for vengeance, I didn't mean that, I have no interest in the matter one way or the other. No, sir; I wouldn't like to see the Koke Company downed now, with Scott's death my interest ceased. No, sir; I don't care a copper cent how they go. Yes, sir, I recognize now that I am making this confession in the interest of a square deal. The gentleman there honestly came to me and asked me this question, and I am brought here as a witness—that is, they asked me if I worked for the Southern Koke Company and also the names of the ex-employees and their addresses. You ask if they also told me that this Koke concern was imitating and substituting for "Coca-Cola"; well, they didn't tell me anything. You ask if I knew that already, that they were imitating and substituting "Coca-Cola"; I didn't know what the Koke Company were doing or had done since May. During my time I knew in my own way that they were doing it, but they never advertised it. When Friend asked me the names of the ex-employees I said I would tell everything I knew, make a confession to him of everything I had been doing. I had no reason for not telling him. No, that didn't ease my conscience. You ask if I felt better after

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having spit it out; if you want to put it that way, put it that way. No, I didn't [530] tell him I was prepared to spit it out, I didn't tell him anything—he asked me to give him a statement of my connection and I did. No, sir, I didn't tell him I was glad to get even with that crowd of damn rascals; he asked me if I would make a statement of my connection with the Southern Koke Company and I told him, certainly I would. I made a statement of my entire connection. You say that this man was not interested in having me say that the Southern Koke Company was an honest concern and sold good stuff and would not have examined me as a witness if I had said so, and you ask, therefore, if he didn't want me to break down the Koke Company; this gentleman told me he only wanted the truth, and nothing but the truth, and I told him that was all he could expect and was going to get. You ask if I have lived long enough to know all policemen and detectives want only the truth; I have never dealt with policemen nor a detective. Yes, sir, I gave them Cain's address and I went and saw Cain. No, sir; I didn't tell Cain what I told them, nor did I tell him when they came down, to give it away. Yes, sir; I brought them down to see him and introduced them to Cain. That was the first time I had ever met him in his home in my life. Never having met him in his home before, I got him to go with me down to the hotel. We didn't talk to him at his home because he had no place in his home to entertain anybody, so we took a walk and asked him did he have any objection to mak-

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ing a statement. Friend was with us at that time. You ask if he went along with us to capture the game; that's not fair to use language like that, you say, "to capture the game." I don't know what he went there for. He went and we asked him if he had any objection to making a statement of the work he had done for the Southern Koke Company. No, sir; I had not told him I had made a statement up to that time. In addition to Friend and Gillon, I have also seen Mr. Hirsch *on* connection with this matter. I saw him yesterday,—he simply asked if I would be here today to testify. I saw him last evening at the hotel. He sent for me, rang me up and when I went down he asked me if I would come down and I told him I would and when I went down I had a talk with him and he asked me if I would come up here this morning to testify. Yes, sir; he could have asked me that over the phone if he had wanted to. Yes, sir; it's as true as everything else I have here stated, that I never said anything to Mr. Hirsch except that I would be **[531]** here this morning. Yes, sir, that's the absolute and solemn fact. I have no enmity against Mr. Mayfield. No, I don't love him like a brother. I don't dislike—I haven't anything against him. You ask if Mr. Mayfield ever put up any of this fraudulent work I was talking about; I knew very little about Mr. Mayfield. I said he asked me to sign an affidavit stating that I had never sold "Koke" for "Coca-Cola" and that I refused. I know I have sworn that I never had sold "Koke" for "Coca-Cola" but I wasn't going to sign any statements for

(Deposition of W. J. Cheevers.)

Mr. Mayfield because I didn't want to put my name to it. He had a form of affidavit there and brought me down under a false pretense. He didn't come out like a man and tell me over the phone what he wanted, but I have given these other people the contrary because they came as men and asked for it. I have given them a statement that I sold "Koke" as a substitute. I am certain, I know it was so. "XQ. 495. And yet you have sworn positively it wasn't." "A. There may be a contradiction, but the Court will find the general tone is honest and sincere, the Court will so look at it." Mr. Mayfield brought me here under a false pretense—that he had a letter here for me to see, and he flashes an affidavit—he had the jurat ready to be filled in. I don't know what the affidavit was but he asked me what I had sold, if I had sold it, and I told him that I would make up a statement of my own. I told him I would not give him any statement at that time, but that I would draw up one of my own, and I went and reported to Friend and Gillon that he had been to see me, and told them what I told him and what he asked me.

Now, coming back again to the paint question, Scott was using a ready mixed paint in cans, which is considerably more costly than mixing it, and I told him I thought it was a loss, that he was using bad judgment in that particular thing, and that it was a leak that he didn't seem to notice; that if he got the ingredients and had them mixed in five gallons or three gallons at a time he would save money instead of sending out and buying five gallons of this ready

(Deposition of W. J. Cheevers.)

mixed paint. Mr. Scott said he had to get a particular color. That's all. No, sir, I never told Mayfield anything about this. Scott went out one day to Brinkley's and he came back—in the neighborhood of Brinkley's shop there was some kind of [532] a paint place, which was the only place in town he could get that particular color—I asked him again why he was doing it and he told me he had to get the same color the Coca-Cola folks had. Yes, sir, Mr. Scott told me that. I don't know whether there was anybody present or not when he told me. No, sir, I can't recollect another living person that heard that statement. I woudn't know positively when it was made, sometime in November or December, 1912. No, I didn't think that was honest at that time, just as I told you frequently. No, sir, all the time I was in this thing I didn't know I was in a dishonest business, I didn't consider it. I told you just what he told me, the argument that I advanced. I had no orders from Scott himself as to anything, I went out and sold "Koke" on my own personality,—that is, on my friendship and acquaintance, and these arguments I have been repeating here, that I told these people. No, sir, Scott never did tell me to go out and sell it as a substitute, but he was there frequently when I made sales and heard my arguments. Yes, sir, I suppose you might summarize this thing in this shape; I went into a thing which I early discovered was built upon the idea of supplying a drink to take the place of calls for "koke" and "dope"; then I saw them using "Coca-Cola" syrup for some purpose—

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I didn't quite catch on to, yet I saw them printing an imitation label which I distinctly know was dishonest; then I saw them using a paint which I distinctly know was dishonest, if what I saw was true. "XQ. 520. Then you yourself told this Adam and Eve sort of story to the bar-keepers—you didn't tell them to do anything wrong, you told them the contrary; that was the situation. Doing all of that, you start off with your deposition to me by saying, so far as you are concerned, you don't know whether it was dishonest; you now say you did know it." "A. I didn't say that to you at all." Yes, sir; I still think that the work I did was honest on my part. I had nothing to do with the judgment of the Southern Koke Company. I was simply put out to sell "Koke" and I done it. Those things came within my observation but I had nothing to do with them, I had no connection with that department of it. Yes, sir; I was still going on earning my $75.00 a month as solicitor, but I was only a solicitor for a short time. Mr. Scott paid me out of his own pocket. You will find I appear on the payrolls of the Southern Koke Company for no more than two months. Me paid my [533] salary. When I was not getting Mr. Scott's money I got the Koke Company's. Yes, sir, somebody paid me from October to May. No, sir, I was not perfectly willing to continue and did not continue until Scott died; I resigned twice. You ask why; well, I quit Scott twice for different reasons. I don't believe it's relevant here why I quit. Mr. Mayfield was not in charge when I quit. It was

(Deposition of W. J. Cheevers.)

Major Wright who was in charge. When he wanted me to go out and sell blocks of stock to my friends I wouldn't do it and simply kept away from down there. Yes, sir, that was the time I made up my mind he was asking too much of my conscience, because they had imported a man to take charge of it—a man from Birmingham—didn't know the conditions and I felt sure the thing wasn't going to succeed. I was perfectly willing to sell the stuff to the traders, but when it came to going into my friends' pockets with stock, I revolted. Then I quit.

You ask what those people were doing with the "Coca-Cola" syrup—that little flask which I said I saw; I don't know what they were doing with it, but Scott told me young Mayfield used that—I asked him what he was doing with "Coca-Cola" syrup here, and he said he used it for testing against their stuff. No, sir, I don't know that of my own knowledge and never saw any of that going on. At present I am unemployed. I have an application in my pocket endorsed by Dr. Howard for a position in the Public Health Service. Yes, sir, I am keeping the boarding-house here.

Deposition of John Cain, for Plaintiff.

JOHN CAIN.

Direct Examination by Mr. HIRSCH.

I am 34 years of age and reside at 2108 Iberville St., New Orleans. I was connected with the Southern Koke Company of New Orleans about April, 1913. I was employed by Mr. Scott. I called on

(Deposition of John Cain.)

bar-rooms, grocers, confectioners, in other words, wherever I could sell the stuff. Yes, sir, I was instructed by Mr. Scott how to approach the trade. Mr. Scott instructed me to go out and sell the stuff—sell the "Koke" on these instructions—I could go out and sell the "Koke" the same as I could "Coca-Cola"; and he gave me the formula or affidavit, that the formula was the same as the "Coca-Cola," and tell them it was the same as "Coca-Cola" and for me to go out and sell it and tell the trade that they could sell the "Koke" the same as if it were "Coca-Cola." [534] He told me there was very little difference in the label—the only difference being that "Southern Koke Company" was on one and the other had "Coca-Cola" on it—the labels was the same—you couldn't tell the difference except by close inspection. He told me to tell the trade "Koke" was made at home here and "Coca-Cola" away from here—"Koke" employed home labor. I don't recollect any other instructions. I sold "Koke," I guess, about two months. Yes, sir, I used the arguments I have described. You ask at what places did I talk and use any of the arguments I have described; well, I called on Thomas Rausch, Mr. Rootmyer and Mr. Ed. Morero—pretty near everybody down there. Yes, sir, I certainly did use those arguments. After the death of Mr. Scott I remained in the employ of the Koke Company one week. Yes, sir, on or about the 23d day of June, 1913, I accompanied S. Friend, B. J. Gillon, and W. J. Cheevers to the saloon of Thos. Rausch. I went in to Mr. Thos. Rausch and asked

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him what I told him when I tried to sell "Koke" and he told the gentleman in my presence the argument I used in selling this "Koke," which was that I claimed it was the same as "Coca-Cola," and that the only difference in the label was that it read "Koke," and that it could be handled over the bar the same as "Coca-Cola" without the trade knowing the difference. On the same day I accompanied S. Friend, B. J. Gillon and W. J. Cheevers to the saloon of Ed. Morero and the same thing happened at that place.

Cross-examination by Mr. DART.

I am a night watchman. No, sir; I was not such before I became a seller of "Koke"; I ran a saloon for myself at Royal and Montague Streets. Well, I will tell you how I came to be employed by the Koke people, through Mr. Cheevers and Mr. Foster is how I came to be employed there. They happened to come on back Canal and Clairborne to Mr. Felix Raptman selling the "Koke," and, through them, that's how I came to go to work for the Koke Company. I won't say positively I worked for two months, but about two months. You say that I was employed, as you understand me, for the purpose of running in this stuff as "Coca-Cola"; I will answer that I was, yes, sir, and Mr. Scott told me to sell it—to sell it the same as if I were selling "Coca-Cola," the trade wouldn't know the difference. You ask if he told me to sell it as "Coca-Cola"; well, yes, sir. He told me there was very little difference in it, it was made out of the **[535]** same formula—I was furnished with an affidavit by Mr. Scott. Yes, sir;

(Deposition of John Cain.)

I told these various people I went to that it was counterfeit "Coca-Cola"; I told them they could sell it and the trade wouldn't know the difference whether it was "Koke" or "Coca-Cola." That's what I stated to Mr. Morero and every place I went into, and Mr. Rausch, and this other man, Rootmyer. No, sir, I can't remember who else I went to and made this statement to,—a good many down there, though, that I did go to. You ask if I sold "Koke" to many people; I did, yes, sir. You ask who I sold it to outside of the three I have examined; well, there is a good many down there—a good many down town I sold it to. No, sir, I can't remember who, but I can find the places, I know where I sold it and the argument I used. Yes, sir; I lived down in that section all my life and know every inch of that territory, but I can't recollect the names of any of the dealers I sold it to except those three; but I can go to every place I went to. Yes, sir; I certainly did go with these gentlemen, whose names I have given you, to Mr. Rootmyer's place. "XQ. 26. And did he remember the circumstances, too?" "A. He did." Yes, sir; I went into Rausch's place with these three gentlemen and I asked him to tell those gentlemen what it was I told him when I was selling the stuff. There is no doubt about that, that is just what occurred, yes, sir. And thereupon he repeated to those gentlemen what I had previously told him. Yes, sir, I am sure of that. No, sir; it couldn't have occurred any other way. I simply kept silent and invited him to tell them what I had said. The same thing

(Deposition of John Cain.)

occurred at Morero's. I kept silent, after telling him to tell the gentlemen what arguments I used, and thereupon those gentlemen told these witnesses that I had told them that this was made just like "Coca-Cola" and couldn't tell the difference. That is what was sold to be used as a substitute to the trade for "Coca-Cola," and that they bought it under those conditions. No, sir, they didn't tell these gentlemen that they sold it under those conditions. I don't know what they did do with the stuff when they bought it. No, they didn't confess that they sold it to their trade as "Coca-Cola"; they haven't said how they sold it. I haven't sold a case to Mr. Rausch, because he didn't take it at the present time and said he would see further, but he didn't take any. No, sir, he never sold "Koke." No, sir, I never actually sold any to Mr. Rausch, nor did I ever actually sell any to Mr. Morero nor to [536] Mr. Rootmyer. "XQ. 47. So that when I asked you the question whether those gentlemen said that they had deceived their trade by selling it that way, you knew that they had none to deceive with." "A. They didn't, but they handled it afterwards, through whom I don't know." The way I know they handled it is because Mr. Rausch told me that he handled it. He told me that that day I went down there, he has got a bottle down there that you can see it—it's syrup—a bottle of syrup. It's the syrup up there—"K-O-K-E" as big as life. Mr. Cheevers worked for the Southern Koke Company, the same as I did; I didn't know him at all until then. He

(Deposition of John Cain.)

is a friend of mine now, yes, sir. No, we have never had a talk about those days; Mr. Cheevers came to my house, him and two other gentlemen, whom I don't know—I had been in bed, and got me out of bed and walked to the corner with them and asked me if I would make a statement, and I told them I would. They told me they wanted the truth and nothing but the truth, and I made that statement. No, sir; Cheevers hasn't said anything to me—hasn't said a word. They told me suit was on and I worked for the Southern Koke Company and to make a statement how I sold the "Koke," which I did. They wanted to know how I sold it—what arguments I had used to sell it. No, sir, they didn't tell me that they knew what kind of arguments I had used; they didn't know what kind of arguments I had used to sell it; and thereupon I told them what I have told you, certainly.

To go back over the story: Yes, sir; I told those men Mr. Scott employed me as a salesman and told me to go out and sell it to the trade as "Coca-Cola." Yes, sir; that it was like "Coca-Cola" in taste, that it was made by the same formula. Yes, sir; that the label was the same, and that nobody could tell the difference only by close inspection. Yes, sir, I accepted the employment under those terms and went out and sold goods just as I stated to you. You ask if I went out and sold the goods which I knew was counterfeit; I was just taking orders from the men—just as I was told to sell it. No, sir; Mr. Scott didn't tell me he was handling "Coca-Cola"; I knew

(Deposition of John Cain.)

he was handling "Koke," that's all I knew; I was told he was handling "Koke." I knew he wasn't handling "Coca-Cola." No, sir; when he told me to take this stuff out and sell it I didn't know he was hiring me to go out and sell something which wasn't "Coca-Cola." **[537]** He furnished me with an affidavit which said it was the same formula as "Coca-Cola," which I showed these people. You ask if I didn't know that it was not "Coca-Cola" when I went out to sell this stuff; I didn't know what it was—all I know, I was selling "Koke," I didn't know what "Koke" was. You ask me again if I didn't know when I went out to sell it that I was not selling "Coca-Cola"; I only had an affidavit saying "Coca-Cola" was made out of the same formula as "Koke," and I showed that to the trade, I didn't know what I was selling. You ask again if I didn't know that I was not selling "Coca-Cola"; I don't know what it was. I knew I was selling "Koke"—"K-O-K-E." You ask again, if when I went out to sell a man I didn't know that I was not selling him "Coca-Cola"; I told him I was selling "Koke," that it was made out of the same formula, but that it was to be sold for "Coca-Cola" and couldn't be told from it. You ask again if, when I went and tried to sell a man these goods, I didn't know I was not selling "Coca-Cola." I didn't know what I was selling; I knew I was selling "Koke." No, I didn't know what I was selling. "XQ. 76. Do you mean to say after the question has been asked you five times, a man of your age and experience and sensibility, you

(Deposition of John Cain.)

didn't know what you were selling people, what you were selling as 'Coca-Cola'?" "A. No, sir; I sold 'Koke,' I didn't know what 'Koke' was, I was told to go out and sell 'Koke.' I went out and sold 'Koke,' I didn't know what 'Koke' was, I knew it was a soft drink and that's all." I was instructed to go out and sell it to anybody that could use it—to anybody in particular. Yes, sir; to tell them it was the same thing as "Coca-Cola" and that they could sell it as "Coca-Cola." Yes, sir; I expected that employment. You ask if I call that an honest or a dishonest employment; I don't know what you call it, I only did as I was told under my boss' instructions. No, sir; I wouldn't be willing to do anything else of that kind for money; I am making an honest living. You ask if I consider that that was honest to go out and sell "Koke" for "Coca-Cola"; I didn't know, I was only obeying my orders. I certainly did take my line of honesty from the man employing me; I went according to his orders and went out and sold it; I didn't know anything about it, I knew it was "K-O-K-E," what it was made of, I didn't know. [538] You say that I knew I was not selling "Coca-Cola"; I knew I was selling "Koke," I am telling you. I went out and told men I could sell them something they could sell as well as "Coca-Cola," I certainly did. There was the affidavit, the best proof in the world that it was made of the same formula. I was depending on the affidavit—I certainly was. Yes, sir; it had a signature to it. It was a printed affidavit. Then I sold it because I

believed it honest, I certainly did, otherwise I wouldn't have sold it. "XQ. 93. You believed what honest?" "A. That I was going out selling 'Koke' and it was made out of the same formula as 'Coca-Cola.'" Yes, sir, I sold "Koke" As a matter of fact I did not sell any "Koke" to Mr. Rausch or to Mr. Morero or to Mr. Rootmyer, no, sir, and I cannot remember the name of a single soul to whom I sold any, but I can go to the stores that I sold to. I was examined on this question by those two gentlemen whose names I have given and told them I couldn't remember the other names. You say that it boils itself down to this: That I went out and tried to sell something to commit a fraud with, but actually never sold any; I went out according to orders. "XQ. 99. I say, but you went out to sell this fraudulent stuff to be used as 'Coca-Cola,' but never sold any to those three gentlemen?" "A. Yes, sir." You ask why I left the employ of the Koke people; I wouldn't have left it if Mr. Scott hadn't died; I would have been with them yet. No, sir; I didn't quit when he died, I worked with them one week afterwards and Mr. Wright let me go. No, sir; he didn't give me any reason for my leaving, we have got no instructions from Mr. Wright. I only knew Mr. Wright was president of the concern; I haven't seen Mr. Wright until after Mr. Scott died, I never knew who Mr. Wright was until then. Yes, sir; I worked for him a week afterwards and then he let me go. I don't know how long Cheevers stayed there. I can't answer whether he was there under Mr. Wright

(Deposition of John Cain.)

very long, because I don't know, nor do I know why they let me go. "XQ. 108. You hadn't sold much for them, I suppose?" "A. I don't know, may be I hadn't. I can't answer that question, all I can tell you is that Mr. Wright let me go. You say I was not making any sales for them; I couldn't make any the week Mr. Scott was sick. No, sir; after Scott died I actually had nothing to do with selling. Mr. Wright paid me and that was the end of it. You ask if I didn't go to only two places, and if, as a matter of fact I ever went to [539] Rootmyer; yes, sir, we went to the three places, but we didn't find Mr. Rootmyer in, so there was no conversation with him. No, sir; Cheevers didn't do any talking, he didn't say a word. Yes, sir; he kept his mouth closed and I didn't do any talking. I asked a question of Mr. Rausch and Mr. Morero, what arguments I had used when I went in there to sell them "Koke"—I wanted them to tell these gentlemen what arguments I used. No, sir, nobody else talked. No, sir; Cheevers didn't talk nor did Cain nor did Friend. Yes, sir; I alone did the talking. No, sir, I didn't go twice with Mr. Cheevers to any of those places. The only time we went was once. We went once to the same place and went together. No, sir, I couldn't be mistaken as to the testimony I am now giving on that point. To repeat: We four gentlemen went to Rootmyers but he wasn't there. We then went to Rausch and I said, "Mr. Rausch, I want you to tell these gentlemen the arguments I have used in trying to sell you 'Koke'" Thereupon Mr. Rausch told them what

(Deposition of John Cain.)
arguments I had used. Yes, sir; we took a drink while that was going on, and then left and went on to Mr. Morero's and there I repeated the same thing: "I want you to tell these gentlemen what arguments I used to you in trying to sell 'Koke'" Yes, sir; that's all that occurred. Thereupon Morero told them, yes, sir, and told them substantially what I am telling you was the argument, yes, sir. No, sir; nobody else did any talking. No, sir; Cheevers did not talk, no, sir, none of the others did any talking. Yes, sir; each of us took a drink. I had a glass of beer, Cheevers had a soft drink, Mr. Gillon took a glass of beer and Mr. Friend drank a soft drink, also. I don't know whether he had any "Coca-Cola" in there at the time, but I know it was a soft drink. anyway. No, sir; I don't remember what day that visit was paid. Yes, sir; it was last month. You ask if it was not the month before last; I don't remember the exact date. Yes, sir; we four gentlemen made that visit to this place by previous engagement between ourselves. Yes, sir; that was on the same day that I saw these two detectives of the Coca-Cola Co. No, sir, I didn't know they were detectives. Yes, sir; they told me that they were connected with the Coca-Cola Company hunting up evidence—they asked me to make a statement. Yes, sir, after we got together they told me that they were representing the Coca-Cola Company in this lawsuit and that they were investigating how the Koke Company did business. [540] I knew they were investigators of the Coca-Cola Co. No, sir, they didn't tell me they

(Deposition of John Cain.)

were lawyers. I didn't know whether they were lawyers or not. You say that I assumed that they were not; well, I felt that way about it, anyway. Yes, sir; it was pretty evident they were not lawyers, and the idea was to get me, in the dealer's presence, to tell them. You say that that idea corroborated what I and Cheevers told them we did do; I don't know what Cheevers told them I did, but I know what I told them. Yes, sir, it corroborated what I told them. I got those instructions when I went into the employ of the Koke Company, from Mr. Scott. You say that Mr. Scott is now dead, of course, and ask who was present when Scott and I had the conversation; there was no one present at any time when he and I had the conversation. You ask if I formed any opinion of him during the time I worked for him; no, sir, I haven't formed any opinion of anybody. Yes, sir, I certainly do think he was an honest man, and a nice man, and a high-class man in every way, I certainly do and because I believed he was an honest man and a high-class man, I believed in him and did exactly as he told me, and for that reason did what he told me, and when he told me to go out and do a thing I went and did it. You ask how I reconcile my impressions of an honest man and a gentleman with this statement I have given you; I see no fault in it; I done his orders, I thought whatever he said was right. When he gave me orders, I went out and obeyed those orders as an employee under him. No, sir; I didn't think it was wrong on his part to try to

(Deposition of John Cain.)

put over that job. When he furnished that affidavit I thought he was right. Yes, sir, I still think he was right, when he furnished me that affidavit. I have always thought he was all right. Yes, sir; I thought we had a right to sell this stuff. He showed me this affidavit where it was the same as "Coca-Cola." No, sir; I was not running a saloon when I was employed by them; I was out of business. "XQ. 185. Did I misunderstand you—or can you tell me if I am right; Mr. Scott told you to sell it as 'Koke.'" "A. Yes, sir." "XQ. 186. Not as 'Coca-Cola'?" "A. No, sir. Mr. Scott told me that I could go out and sell it the same as 'Coca-Cola' and notify the trade there was no difference in it, and that"— "XQ. 187. Well, he didn't tell you to sell it as 'Coca-Cola'"? "A. No, sir, he didn't tell me to sell it as 'Coca-Cola.'" "XQ. 188. Told you to sell it as 'Koke'"? "A. Told me to sell it as 'Koke,' yes, sir." [**541**] Yes, sir; he used the word "dope" to me at times.

Deposition of C. H. Whittle, for Plaintiff.

C. H. WHITTLE.

Direct Examination by Mr. HIRSCH.

I reside at Gainne and Magazine Streets in New Orleans. I am 42 years of age. I was never exactly employed by the Southern Koke Company, but I went out soliciting orders for Mr. Scott. I received instructions from Mr. Scott as to how to solicit orders. He came to me one day and asked would I go out and help Mr. Cheevers in getting

(Deposition of C. H. Whittle.)

customers for his "Koke," when they had the bottling department going, and I went out with Mr. Cheevers and got from thirty to forty one day, and the next day I got quite a number of customers for him, I don't know exactly. Well, I used a great many arguments to the trade in selling "Koke," one I used was that the Coca-Cola people had put up money for prohibition—a million dollars, so I was told by Mr. Scott—and several other things. He told me that the Koke people was the originators of "Coca-Cola" and a man by the name of Pemberton, he died and they beat his wife out of it in the courts that's what Mr. Scott told me. You ask what arguments I used to the trade to sell it; well, when I sold "Koke" I told them it was "Coca-Cola"—just the same, not a bit different, they couldn't tell it by taking a bottle of each and drinking it.

Cross-examination by Mr. DART.

I sold it as "Coca-Cola," not as "Koke," no sir,—not all the time, at times when people asked me for "Coca-Cola" I told them to take "Koke," if they asked me was it "Coca-Cola," I told them yes. You ask who I told that to; I told everybody that came in to buy it, a fellow in the saloon, Bob Kitchens, in the Civil District Court—he was a saloon man, I wasn't selling it to him, I was selling it to the customers—the people that came in there buying in the saloon. I was bartender in that saloon at that time. No, sir, I did not sell it to my customers as "Coca-Cola." I sold it as "Koke" and as "Coca-Cola" and sold it when people came in and asked for "Coca-

(Deposition of C. H. Whittle.)

Cola" I would give them "Koke." Yes, sir; I did that when I was bartender. When I sold it to the trade I sold it as "Koke." No, when Scott sent me out he didn't exactly tell me to sell it as "Coca-Cola" but he told me to say anything so I sold it. As long as I sold it he didn't care. [542] He put it in pretty near that exact language. He told me he didn't care how I sold it, so I sold it. You ask won't I swear one way or the other—did Mr. Scott tell me to sell that stuff as "Coca-Cola"; he told me to sell it any way I felt like selling it, as long as I sold it. You again ask me if Mr. Scott told me to sell that stuff as "Coca-Cola"; he told me to sell it any way I could sell it—it didn't make no difference to him how I sold it, so I sold it. You ask me for the third time if Mr. Scott told me to sell that stuff as "Coca-Cola"; he didn't make any exact assertion on it at times, at certain times he did. He told me plump and plain to say it was "Coca-Cola" if I could sell it that way. Yes, as "Koke" and as "Coca-Cola," if I could sell it that way. You again ask me if I am certain that Mr. Scott told me to sell "Koke" to the dealers as "Coca-Cola"; I answer, yes. Well, I don't know for sure now whether anybody was present when he told me that or not. You ask how I came to be a witness here and who brought me here; I came through Mr. Cheevers. He knew I was with him and asked would I come up and give my testimony as to the way we sold "Koke" and I told him, yes. He didn't exactly bring me here to-day, but I made an appoint-

(Deposition of C. H. Whittle.)

ment with him to come. No, sir, he didn't introduce me to any other gentlemen. No, sir, I didn't give a statement to anybody. No, sir, I haven't talked to anybody before getting on the stand. Yes, sir; I stick to that. No, I haven't talked to anybody about what I was going to testify about here. You ask what I did talk about; well, I talked about different things—Cheevers asked would I come and give my testimony and he took me before this gentleman and asked would I come and give my testimony in regards to the way I sold "Koke," and I told him, yes. No, sir; I didn't tell that gentleman what I have been telling here. I am pointing to Mr. Hirsch. I was in his office, Mr. Cheevers took me up there yesterday afternoon to ask would I be a witness. I don't know whether it's his office, it's his room, I guess, in the Grunewald Hotel. Cheevers took me up there yesterday evening. No, sir, Mr. Hirsch and I didn't talk about anything. He just asked did I work for the Koke Company, and I told him, no, I was soliciting "Koke" for the Koke people, but I never worked for them. In fact I got paid by Mr. Scott for what I done. Yes, sir; that's all I told Mr. Hirsch; I told him absolutely nothing else. [543] Yes, sir, I stayed with him some little time and we talked about different subjects and had a glass of beer. Yes, sir; we talked about the weather. No, I don't think we hit the war in Europe much. Yes, sir; all I told him was what I told you here, now: That I once sold "Koke" for the Koke Co. I told him I sold "Koke" and

(Deposition of C. H. Whittle.)

that is every word I told him. With that exception, I have talked to nobody else. Well, I talked to one or two other gentlemen in there, but I don't know their names. No, I don't think it was any of these gentlemen sitting around here now. Mr. Cheevers and I was together, I don't think it was anybody else. I am doing nothing right at the present time; I am out of a job. I don't know whether I am getting paid for the time lost up here or not. I never had any understanding with anybody about it. No, sir, they did not say they would pay my expenses. I don't know of anybody else that Cheevers brought down to see these gentlemen. I know nothing about Cheevers' transactions, only what he did with me—he just asked would I come down and give my testimony, and I told him, yes. As far as I know, I am the only witness he brought. Yes, sir, I know Cain, but he wasn't there—I seen him around the "Koke" place once or twice. I never was in the Koke Company's employ, only through Mr. Scott and then only for just one or two days. Yes, sir, Scott paid me for what I did—gave me $10.00 one time and $25.00 another. No, I don't know what day that was—about May, I believe, a year ago. Yes, I remember the name of some of the people I sold "Koke" to. I sold it to Kelly and Winn—he is dead now, but Winn keeps the place. I sold it to Winn. I also sold it to Morton in the alley. You ask if I sold it to those people as "Coca-Cola"; I told them anything so they would buy it. You ask what I told Winn; I told them it was "Koke," but just as good

(Deposition of C. H. Whittle.)

as "Coca-Cola." I told Morton the same thing, told everybody the same thing wherever I sold it—that it was "Koke," but just as good as "Coca-Cola," yes, sir, exactly.

Deposition of William J. Speyer, for Plaintiff.

WILLIAM J. SPEYER.

Direct Examination by Mr. ROGERS.

I am vice-president and superintendent of the Houser Printing Company, at 624 Poydras St., New Orleans. Yes, sir I recollect an interview I had in 1913 with Mr. Scott and a Mr. Cheevers representing the Southern Koke Company of New Orleans. [544] Mr. Scott came in and asked about having some cuts made or having some labels made, and I didn't have the cuts present here, and, about two days afterwards, they brought the cuts in with Mr. Cheevers and they wanted the colors of pink, something similar to the colors used on "Coca-Cola" bottles; well, I didn't know what that was and Mr. Cheevers went out and brought a bottle for me to see the color of the ink. I used a color of ink as near as possible to that—a kind of blue black. Yes, sir; Mr. Cheevers went out and got a bottle from the saloon and brought it back. We printed one hundred thousand labels from the cut I have spoken of, and delivered them as you have it there on these receipts. Plaintiff's Exhibit #106 is an impression of the plate that was delivered to me by Mr. Scott, but it's a rough proof that was taken when we went to deliver the proof to them, after Mr.

(Deposition of William J. Speyer.)

Scott was dead. Plaintiff's Exhibits #107, 108, 109 are receipts. Whenever we send out any packages we always get receipts and keep records of them in the office, in case a dispute comes up we can always locate them. Yes, sir; these slips represent the delivery of the labels that we made for the Southern Koke Company, about which I have testified. The envelope marked Plaintiff's Exhibit #110 is a record of the job. As soon as a job enters, it is entered on this ticket, goes to the composing room, and then to the press-room; this is the record of it. That is the envelope enclosing the proof and slips I have testified about. I have had these proofs and slips and the envelope in my possession since March 27, 1913. Just as I came in the door I met you and gave them to you. "X. 20. Did you make a label for the Southern Koke Company imitating the color of the 'Coca-Cola' label?" "A. Yes, sir." "X. 21. And you got that color from a specimen which Mr. Cheevers went out and got?" "A. Yes, sir." "X 22. He got a bottle of 'Coca-Cola' with that label on it?" "A. Yes, sir."

(Plaintiff's Exhibits 104, 106, 107, 108, 109, 110 were here tendered and offered in evidence by plaintiff.)

(There was no cross-examination of this witness.)

Deposition of A. B. Freeman, for Plaintiff.

A. B. FREEMAN.

Direct Examination by Mr. HIRSCH.

I live in New Orleans and am Secretary and Treasurer of the [545] Louisiana Coca-Cola Bot-

(Deposition of A. B. Freeman.)

tling Company. I represent the Coca-Cola Company as their authorized bottlers. No, sir, I do not represent the manufacturers of the syrup. I represent the Bottling Company. Mr. J. L. Murphy is the local representative here of the manufacturers of the syrup. Yes, sir, we bottle "Coca-Cola." Yes, sir, Plaintiff's Exhibit #111 is a label used by us and the bottle used by us, in the bottling of "Coca-Cola."

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #111.)

Plaintiff's Exhibit #112 is a "Koke" dispensing bottle used for dispensing their "Koke" syrup.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #112.)

I have seen several of these containers in use in several of the saloons around New Orleans, similar to this one. Yes, sir; I had a conversation in regard to the paint used on "Coca-Cola" barrels with Mr. Palmer. He came to my office—I had known him for sometime—and asked me if I could find out, or would find out, for him the exact kind of paint used by the Coca-Cola Company for painting its barrels. I told him I would gladly do so, and he volunteered the information that he wanted to get it for a new concern just starting up in town and putting out a syrup—the Koke Company—who wanted to paint their barrels identically the same color, and would use that paint if he could get it. I told him I would get the information for him, but that I was afraid he couldn't use it, and I showed

(Deposition of A. B. Freeman.)

him one of the printed decisions in the "Gay-Ola" case that I happened to have in my desk. He thanked me for the information and said he would go on away.

Cross-examination by Mr. DART.

Mr. Hirsch asked me, as I understood the question, if Plaintiff's Exhibit #111 was the "Coca-Cola" label and if it was a "Coca-Cola" bottle. I replied that it was, in both instances, as used by us. This particular bottle is the property of the Louisiana Coca-Cola Bottling Company, so far as the actual glass is concerned; the tradmark, of course, is the property of the Coca-Cola Co. The Coca-Cola Bottling Company is a different corporation, of which I am the Secretary and Treasurer, and [546] it owns the bottles and does the bottling. We perfect the manufacture here, that is we make out of the syrup the contents of that bottle— and bottle it and sell it. We get the labels from the Coca-Cola Co. Except the syrup, that's all they furnish. We buy the crowns direct from the concern who is licensed to sell them to us by the Coca-Cola Company, the Bottling Company, and not the property of the Coca-Cola Company—that is, the Syrup Company. I am the same Mr. Freeman, who testified before the United States District Court in Louisiana in the trial of the case of the Coca-Cola Co. against Glee-Nol Bottling Co. You ask if the bottle marked Plaintiff's Exhibit #111 has been used by the bottlers for other purposes than "Coca-Cola"; as I testified in the Glee-Nol case, Mr. Dart, the standard "Coca-

(Deposition of A. B. Freeman.)

Cola" bottle is adapted for us only in bottling "Coca-Cola" and has been used for no other purpose except, as I believe I expressed it, human flesh is weak and there might have been a few errors out of thousands of bottles, just the same as might happen in counterfeit money, by a paying teller. No, sir, it is not a fact that "Grapine" has been put out by us in bottles having "Coca-Cola" blown in the side thereof, not to my knowledge. Up to the time of the 1911 convention that bottle had not been adopted. You ask if I didn't testify in the Glee-Nol case that a bottle of that general shape and make had been generally used for various drinks, and that I myself had bottled "Grapine" in such a bottle and you say that you showed me a bottle, if I will recollect; I couldn't have testified that positively, Mr. Dart, because that particular bottle, was a result of this conference between the bottlers and the Coca-Cola Company that you refer to—that bottle was not in existence before hand. Yes, sir, it is true that a bottle bearing the label "Coca-Cola" has been generally used by our Bottling Company anterior to the convention bottlers which I speak of in 1911, for bottling other drinks than "Coca-Cola," but not that particular bottle, because that particular form and shaped bottle was adopted by that convention—not "Grapine" however, because we didn't bottle "Grapine" prior to that time, it wasn't on the market. You say you showed be a bottle of "Grapine" during the Glee-Nol trial bottled in a bottle exactly like this and

(Deposition of A. B. Freeman.)

ask [547] me if I don't remember it; I don't recollect that particular bottle; I don't say that you didn't, there were quite a number of bottles shown me for identification. "XQ. 28. I ask you, 'Is it not true that you yourself bottled "Grapine" and sarsaparilla in your "Coca-Cola" bottles?' You answered, 'We haven't bottled any other things in them for the last two and a half to three years'; that's the correct answer, wasn't it?" "A. Yes, sir, and I reiterate that." And that meant that I had bottled other things anterior to the last two and a half to three years, and the qualification as to "Grapine" that I now make is that we put sarsaparilla in such bottles and not "Grapine," because it was not then on the market. My recollection is that "Grapine" was first on the market the beginning of last year,—possibly last fall. That is not a "Coca-Cola" product. It is put up by the William A. Abbott Co., of Los Angeles. It is about the same shade of color as sarsaparilla and "Coca-Cola," but it is colored with coal tar color, whereas "Coca-Cola," is colored with caramel, but it has about the same general appearance and color. Anterior to this convention of bottlers that I speak of, the "Coca-Cola" bottle had the trademark blown in all over the bottle in various positions; that is, there was no particular place where they blew in the name "Coca-Cola." The trademark itself was uniform, but it was not uniformly blown in the same place on every bottle. It was not I who testified that even at this time there is a percentage of "Coca-Cola" bottles

(Deposition of A. B. Freeman.)

that are made with the trademark blown on the shoulder. It was Mr. Graham who testified to that. I couldn't say whether that is a fact or not, because I don't make the bottles, and we personally don't buy any except that particular kind of bottles,—I mean my own company here in New Orleans. No, I don't know that the bottles are not uniform; there is no new bottles being introduced to the trade except the standard bottles. I understand that there is some of the older bottles that turn up from time to time, and probably a small percentage of them are still being filled with "Coca-Cola." We come only in contract with our own immediate territory and we don't see any other bottles being used in the trade. Yes, sir, you exhibited a number of bottles to me and I recognized them as various types of "Coca-Cola" bottles that [548] were used prior to the adoption of the standard bottle.

Redirect Examination by Mr. ROGERS.

By "label on that bottle" I meant and referred to the paper label thereon; namely, Plaintiff's Exhibit #111.

Deposition of George S. Morse, for Plaintiff.

GEORGE S. MORSE.

Direct Examination by Mr. ROGERS.

I am the buyer for the Economy Drug Store, 1019 Canal St., New Orleans, which concern operates a soda-fountain. I have been connected with concerns which operate soda-fountains for about fifteen years; namely, at Johnson's Pharmacy on Gerard

(Deposition of George S. Morse.)

and St. Charles Sts., and at the Economy. Yes, sir; I am and have been about the fountains in such a way that I can hear people when they come in and ask for drinks and hear the language they use in making known their wants. Yes, sir; we handle and dispense "Coca-Cola" and have been doing so ever since the fount was opened. The Coca-Cola Company of Atlanta, Ga., makes "Coca-Cola." You ask if people, when they mean "Coca-Cola," invariably use the name "Coca-Cola" or if they have other expressions; oh, sometimes they use other expressions. They usually ask for a "dope" or "koke." When a person comes into our fountain and asks for a "koke" or a "dope" we understand that he means "Coca-Cola," and we furnish "Coca-Cola," in response to such requests. (Mr. LITTLETON.—We wish to repeat here the same general objection to this character of testimony as to the nicknames that we have made all along through the depositions.) We have never had a purchaser to reject it on the ground that it was not what was asked for.

Cross-examination by Mr. DART.

You ask what do I understand by the word "dope"; I understand by that that it must stimulate them some, that's the reason they ask for it in that way. A man who uses dope is a man who seeks a stimulant. Usually it is applied to morphine or cocaine—any opiates. It was once the general impression that "Coca-Cola" had some stimulating drug in it, and I always thought it myself until I

(Deposition of George S. Morse.)

read the report of the Government that it didn't contain it. [549] I think it was in the past six months, if I remember right, that I read it. Yes, sir; it is the general impression of our customers that it does contain a stimulant of the kind that has been suggested—cocaine, or morphine or something like that. Yes, sir; I have met men and women who are known as "dope fiends" or "hop fiends." You ask if I have detected that the "hop fiend" or "dope fiend" as a rule follows up his dope with a soft drink or stimulating drink; I haven't met them in my line, I have noticed that in drinking, that's all,—I haven't noticed that kind of thing at all. If they can't get the cocaine or morphine they usually get whiskey or take something which contains cocaine. No, sir, I have handled none of the other sort of drinks. When I say "Coca-Cola" is a product manufactured by the Coca-Cola Company, of Atlanta, I get that from the labels on the packages. We don't buy it direct from them, we buy it through the wholesalers in town. The label states it is manufactured by the Coca-Cola Company, of Atlanta, Ga., and that is how I derive my knowledge. Of course, I don't know what the other soft drinks are, or what names the habitues call for them under.

Deposition of Clarence J. Hogan, for Plaintiff.

CLARENCE J. HOGAN.

Direct Examination by Mr. HIRSCH.

I am a detective employed by the Pinkerton National Detective Agency, and have been a detective for something over two years. I have seen Plaintiff's Exhibit #113 before, and the label thereon has my initial on it on the corner there (indicating). I wrote the label and put my initials on it. I purchased this bottle from Tranchina's cafe. Just a minute on this Exhibit #113 here, this bottle was labeled by B. J. Gillon in my presence and designed that. The same applies to Plaintiff's Exhibit #114, which was also purchased at Tranchina's cafe by Gillon in my presence. Plaintiff's Exhibit #115 was purchased by Gillon in my presence. Plaintiff's Exhibit #116 was purchased at Bob Kitchens, 1200 Carondelet St. Plaintiff's Exhibit #117 was purchased at Wendt's saloon, 1000 Baronne St., April 26, 1913. Plaintiff's Exhibit #118 was purchased by Gillon in my presence, April 14, 1913. Plaintiff's Exhibit #119 was purchased at Tranchina's cafe on April 27, 1913. Plaintiff's Exhibit #120 was bought at Bob Kitcher's saloon, 1200 Carondelet [550] St., on April 27, 1913. Plaintiff's Exhibit #121 was bought at Shepherd's saloon, 437 St. Charles St., on April 26, 1913. Plaintiff's Exhibit #122 was purchased at Wendt's saloon, 1000 Baronne St., April 23, 1913. I have examined each of these products and my initials and marks are up in

(Deposition of Clarence J. Hogan.)

the corner of the labels attached thereto by which means I identified these bottles. I did not make out any of the labels on any of these bottles but I saw them made out. The same day that we purchased. In the case of each purchase, either Gillon or I asked distinctly for "Coca-Cola" and in each instance one of these exhibits was handed out to us by the bartender, without any explanation whatever. In cases where an explanation was made, we refused to take the article.

Cross-examination by Mr. DART.

There were places where we asked for "Coca-Cola" and they didn't have it, but told us they had nothing but "Koke." In such instances as that we didn't take anything, but walked out of the man's place. I haven't the slightest idea how many places of that kind we went into, unless I would refer to my notes. You say that judging by these *peoples,* we visited only three or four places; well, no, sir; we didn't we visited a number of places, but the exact number I will not be able to state. These purchases here are the only ones as to which we got results. I couldn't say how long we were working. I couldn't say whether or not we were working a week unless I was positive. I have no way of recollecting it only by referring to my reports that were written on the night or the afternoon of the purchase of these bottles. But, we did go to a great many places where they told us they had no "Coca-Cola" and offered us "Koke." I have no memory of how many days we worked at this. We have produced

all the "Koke" that was offered us for "Coca-Cola." You say you take it for granted that we were not deceived when we got it; why, sure not. We were out hunting for it and when we got it we simply picked it up and took it out. Sure we knew what it was when we got it, but they didn't think we did. They thought we were soft and easy. Yes, sir; we asked for "Coca-Cola" all the time—nothing but "Coca-Cola." We distinctly asked for "Coca-Cola." If I would go into a place and ask for a bottle of "Coca-Cola" I would do that distinctly and in case they didn't have the "Coca-Cola," such as **[551]** these, why they would shove us out this "Koke."

Redirect Examination by Mr. HIRSCH.

After referring to my notes I am able to reply that I went to twenty different places altogether. You ask how many of those places told us they didn't have "Cola-Cola" but had "Koke"; that's the number here that gave me "Koke" for "Coca-Cola." None of them said "we haven't got 'Coca-Cola' but we can serve you 'Koke' "; there is three told us they had "Koke." No other substitutes with the exception of "Koke" were offered us, except whenever we would ask a man for "Coca-Cola" and he didn't have it he would say he could furnish us with cream soda or sarsaparilla—that happened on three occasions. And on three occasions he said he could furnish us with "Koke" and on ten occasions they offered us genuine "Coca-Cola."

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits Numbers 113 to 122, inclusive.)

Deposition of Frank J. Bogner, for Plaintiff.

FRANK J. BOGNER.

Direct Examination by Mr. HIRSCH.

At the present time I am not with the Pinkerton National Detective Agency, but I was with them on or about May 7, 1913. I didn't write the label on the bottle marked Plaintiff's Exhibit #123, but I signed it. That bottle was purchased at George Springer's. I went with Mr. Condon and we asked for "Coca-Cola" and they gave us "Koke." We asked him to sell us a bottle of "Coca-Cola" and he sold us this. It was given us without any explanation whatever. Plaintiff's Exhibit #124 was purchased in the same manner and under the same circumstances from Bauman's saloon. Plaintiff's Exhibit #125 was purchased in the same way at Gimilli Bros. Company, Drey Street, on May 3, 1913. Plaintiff's Exhibit #127 was purchased at J. Bauman's saloon, 620 Conti St., May 8, 1913, under the same conditions as outlined above. Plaintiff's Exhibit #128 was bought at J. Bauman's saloon, 620 Conti Street, May 7, 1913. Plaintiff's Exhibit #129 was bought at Martin's Cafe, corner of Exchange Alley and Iberville Street. Plaintiff's Exhibit #130 was bought in Martin's cafe at the above address on May 8, 1913. Plaintiff's Exhibit [552] #140 was bought at Curber's 409 St. Charles Street, April 30, 1913. Plaintiff's Exhibit #141 was bought at Curran's saloon, Chippewa and St. Thomas Streets, July 11, 1913. Plaintiff's Exhibit

(Deposition of Frank J. Bogner.)

#142 was bought at George Springer's place, 128 Royal Street, May 8, 1913. Plaintiff's Exhibit #143 was bought at George Springer's, Royal Street, on May 6, 1913. Plaintiff's Exhibit #144 was bought at Martin's cafe, Exchange Alley and Iberville Street, May 6th. Plaintiff's Exhibit #145 was bought at Curren's saloon, St. Thomas Street, July 9, 1913. Plaintiff's Exhibit #146 was purchased at Gimelli Bros. Company, King and Drive Streets, May 1, 1913. Plaintiff's Exhibit #147 was bought at J. M. Lotz's saloon, 1300 Magazine Street, on May 1st. Plaintiff's Exhibit #148 was also purchased at J. M. Lotz's saloon, 1300 Magazine Street on April 30, 1913. Plaintiff's Exhibit #149 was also bought at Lotz's saloon on May 5th. Plaintiff's Exhibit #150 was bought at Curren's saloon, Chippewa and St. Thomas Street, July 10, 1913. Each of these exhibits was purchased in the same manner and under the same circumstances, namely; Mr. Condon and myself went into a bar-room, called for a glass of "Coca-Cola," and they took out a bottle of "Koke," poured it in a glass, and we drank a part of it; then we asked them to sell us a bottle to take with us,—a bottle of "Coca-Cola,"—and they wrapped up a bottle of "Koke." No explanations whatever were made. That's all that happened.

Cross-examination by Mr. DART.

No, sir; it didn't hurt us to drink all that stuff. I couldn't tell exactly how many places we did go to. We would go different days, some days went as high

(Deposition of Frank J. Bogner.)

as twenty and some days only ten. We kept it up, I suppose, two or three weeks. Yes, sir; that's all we got. In many instances they said they didn't have it, and, of course, we would go out. Some places told us they had "Koke" and [553] didn't have "Coca-Cola," a great many places told us that, and of course, when they offered us "Koke" why then we didn't buy it. Sometimes we might take a cigar to keep from walking out without buying anything. Yes, sir; we have produced all the "Koke" we got in our search. We were employed to get that stuff if we could; we went out to see if they would sell us "Koke" for "Coca-Cola," and, when we got it, we wrapped it up and put the name of the party we got it from on it. We went to see if we would get a substitute for "Coca-Cola" or not, and when we got it we got what we were searching for, got the evidence against him. Of course, when those fellows gave us a bottle wrapped up we knew we had them. If they were willing to sell something instead of "Coca-Cola" as a substitue, of course, we nad them, we had the evidence, and took it to the office.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits Nos. 123 to 150, inclusive.)

Deposition of C. G. Peters, for Plaintiff.

C. G. PETERS.

Direct Examination by Mr. ROGERS.

I am a druggist located at Barrone and Poydras Streets, in the city of New Orleans and have been a druggist for twenty-eight years. Yes, sir; I operate

(Deposition of C. G. Peters.)

a soda-fountain at my drug store and have done so for twenty-eight years. I do a fairly good business. I handle "Coca-Cola" and have done so for about 18 or 20 years. I presume the Coca-Cola Company, of Atlanta, makes "Coca-Cola." Yes, sir; it is a product extensively advertised. Yes, sir; occasionally I am about the fount myself so that I can hear people when they ask for drinks that they want, and that has been true all the time I have been in business. When people want "Coca-Cola" most of them ask for "Coca-Cola." Some ask for "koke" and some for "dope." When a person comes into my store and asks for "dope" or "koke" I understand that he means "Coca-Cola" and in response to such requests we supply "Coca-Cola." No, sir; I have never had "Coca-Cola" rejected when people asked for a "koke" or a "dope" as not being the product asked for. You ask how long I have known the names "dope" and "koke" to be used as nicknames for "Coca-Cola"; lately,—I can't tell exactly, might be seven or eight years, might be longer. **[554]**

Cross-examination by Mr. DART.

Oh, yes, sir; the majority of my people in calling for "Coca-Cola" use the trade name, and it is only during the last six or seven years that I have heard people speak of it as "koke" and "dope." Yes, sir, I am a druggist and the word "dope" to a druggist has a meaning to it—not exactly soda drink, though. It means morphine, cocaine, something like that—anything of which the drug forms a part.

(Deposition of C. G. Peters.)

You say you suppose it's true with me, as was the general impression up to a very recent time, that "Coca-Cola" had something of that kind in it; well, as a druggist I think it did have something in it and that was pretty generally known, too, and I suppose it was known to my customers. Yes, sir; I have handled a lot of these drinks like root beer and sarsaparilla. The coloring matter in root beer is burnt sugar, what we call caramel. The color of sarsaparilla, root beer and "Coca-Cola" is very much alike. There is no distinction to the ordinary eye. I have been handling sarsaparilla and root beer for 28 years. I was handling it before I ever handled "Coca-Colo"—before I ever heard of "Coca-Cola." Yes, sir, I remember the thing that used to be called "Wine of Coca"; that's an official preparation, standard—in the Pharmacopeia. I have known "Wine of Coca" ever since I have been in business. You ask if I remember who used to put it up; why I make it, everybody makes it. It's just open to the whole world. It's color is dark like "Coca-Cola," Sarsaparilla and root beer. I haven't made it for a number of years, it has died out, no use for it. These other things have taken it's place. It used to be made out of coca leaves and Sherry wine. In those old days we gentlemen of the trade used to buy the coca leaves and the Sherry wine and make it ourselves, or we made it out of the fluid extract of coca. You ask if that's the same coca leaf that I have seen advertised on the "Coca-Cola" literature; I don't know about that. Yes, sir; there is only one coca

(Deposition of C. G. Peters.)

leaf. Yes, sir, the coca leaf has in it the elements of cocaine. When I sold wine of coca there was cocaine in it, yes, sir. The fluid extract of coca was a commercial article generally sold at the time I am speaking about, and the "Wine of Coca" was sold extensively, also, but "Wine of Coca" has not been used for the last eight or nine years. **[555]** However, it was the predecessor of these things and had the same general look and taste. There was no secret in the trade, those who used "Wine of Coca" knew what it was made of, certainly. It was generally understood by the physicians that there was not enough cocaine in it to do any harm. It was simply a stimulant. I have been using "Coca-Cola" exclusively and I don't use any of the other soft drinks. You ask if I know what the others call for; I will tell you, I had so darn many people come around there that I ran them all out; they tried to come and sell a thing as "Coca-Cola" and tell you you can use it as "Coca-Cola" and expect you to substitute and use it as "Coca-Cola." Every one of them does that, all that have been in my store,—there has been "Gay-Ola," and "My-Ola"—I don't know how many different kinds, about a dozen—all rivals of "Coca-Cola" and not a one spent a dollar in advertising, and all trying to work on the advertising the Coca-Cola people are doing. The advertising of the Coca-Cola people is what sells it, they don't come in for "dope" or "koke" or anything else. No, I don't sell their "Koke" or "Dope" and never have. No, sir, of course, I have never seen "Coca-Cola" advertised

(Deposition of C. G. Peters.)

under those names, "Koke" and "Dope." They have always advertised it as "Coca-Cola."

Redirect Examination by Mr. ROGERS.

No, this "Wine of Coca" that I speak of is not a soda-fountain beverage, it's mostly used by physicians in prescriptions. Nobody came in and asked for it, it was all used by physicians—the only other preparation of coca leaves was "Vin-Mariana"—this was a French preparation, and advertised as such, with very glowing testimonials, as I remember, from the Royalty, and all that kind of thing. That has been practically dead for the last eight or nine years. That's a medicine, and that's also true of this "Wine of Coca."

Recross-examination by Mr. LITTLETON.

As a matter of fact the soda-fountain is a comparatively modern institution in drug-stores, and these various drinks have come in following up the general development of the drug-store into a soda-fountain. You ask about what time the soda-fountain became an adjunct to the drug-store and if it was about twelve years ago; well, [556] it was a little longer than that. May was about the first one down here, and for a long time he was alone. No, Cusack had a fountain in his place. May was not the first one; Cusack had it a long time before May.

Deposition of Joseph A. Condon, for Plaintiff.

JOSEPH A. CONDON.

Direct Examination by Mr. HIRSCH.

I am working for the Pinkerton National Detective Agency and have been with them since April 30, 1913. Plaintiff's Exhibit #125 has my initials on the label. Yes, sir, I remember purchasing that bottle. It was bought at Gimilli Bros. saloon on King and Drive Streets, May 3, 1913—sold to me as genuine "Coca-Cola,"—for which I paid five cents. I asked for a bottle of "Coca-Cola" and they served "Koke" at the bar. No explanation was made. Plaintiff's Exhibits #123 to #550, inclusive, were purchased under similar circumstances which were as follows:—Mr. Bogler and I went into the saloon and asked for a bottle of "Coca-Cola" and we were served a bottle of "Koke" at the bar and after being served with it we asked for a bottle of "Coca-Cola" and were served with that bottle of "Koke." No explanation was made in regard to the purchase except what I have stated. That applies to each one of the Exhibits mentioned above.

Cross-examination by Mr. DART.

You ask me which of us asked the questions, I or Bogner; now, I will have to be my report to tell you who purchased the exact bottle, but it was one or the other of us, we were together in each instance. Yes, sir, we were sent out to hunt for just that sort of thing, with the idea of getting "Koke," and we have produced all we got,—or we state in our report what

(Deposition of Joseph A. Condon.)

we got. If they didn't have "Coca-Cola" but "Koke" we state so in our report. If they offered us "Koke" we refused it—that is, if we asked for "Coca-Cola" and they stated they didn't have it but had "Koke," we refused it.

Redirect Examination by Mr. HIRSCH.

You ask if they handed us anything besides "Koke"; why, I would have to get my report to see. But other things were presented to us, for instance, "Gay-Ola." [557]

Recross-examination by Mr. LITTLETON.

Yes, sir; as "Coca-Cola." No, I didn't produce that, I haven't the report here, I think it is in the report here.

Deposition of B. J. Gillon, for Plaintiff.

B. J. GILLON.

Direct Examination by Mr. HIRSCH.

I am with the Pinkerton National Detective Agency and will have been with them two years in October. Yes, sir, I am a detective. Plaintiff's Exhibit #114 is a bottle of "Koke," which I purchased at Tranchini's saloon, April 27, 1913, accompanied by operative, C. J. Hogan of the Pinkerton National Detective Agency. When we went in there we asked the bartender for a "Coca-Cola" and he served us "Koke." After he served us "Koke" we asked him to wrap up a bottle of "Coca-Cola" to take home and this bottle was wrapped up and is the one which we took home. I wrote the label on that bottle. Nothing else occurred besides what I

(Deposition of B. J. Gillon.)
have repeated here. Plaintiff's Exhibit #113 was purchased from Tranchini's; #122 was purchased at Wendt's saloon, 1000 Baronne Street; No. 120 was purchased at Bob Kitcher's saloon, 1200 Carondelet and so were Nos. 115, and 116; No. 118 was purchased at John Shepherd's saloon, 437 St. Charles St., and so was #121; #117 was purchased at Wendt's saloon, Baronne Street. All these purchases were made under the same conditions and circumstances as I have stated with respect to Exhibit #114. Operative C. J. Hogan was with me when I made all of these purchases of the bottles enumerated and we were together all the time when he asked for these things. We were in the presence of each other and heard each other. We visited twenty places, altogether. There were four places where "Koke" was given us when we asked for "Coca-Cola." Yes, sir; there were four places that served "Koke" to us in response to orders for "Coca-Cola." There were ten places where "Coca-Cola" was given us in response to orders for "Coca-Cola." We didn't buy them; whenever they served "Coca-Cola" we just left the saloon. There were three places which said they didn't have "Coca-Cola" when we called for "Coca-Cola," but which told us they could give us "Koke." At other places they told us they didn't have "Coca-Cola" but could serve soda pop or sarsaparilla. [558] On or about the middle of June of this year (1914) in company with Sam Friend, W. J. Cheevers and John Cain, I visited Rausch's saloon on Court and Rampart Streets, and

(Deposition of B. J. Gillon.)

Marero's saloon, and Montague and Rampart. Cain asked Rausch if he remembered the argument put up to him to take "Koke" in the saloon, telling him he could substitute it for "Coca-Cola" and make an easy sale of it; and Rausch said he remembered the proposition all right, but he wouldn't put the stuff in his saloon because he knew it was a small seller and couldn't get rid of it. The same thing happened at Marero's saloon.

Cross-examination by Mr. DART.

I am 26 years old, I came from New Orleans, was born and raised here. This October will be two years that I have been a detective. In each place we went to, we called first for a glass of "Coca-Cola" and they served us out of the bottle,—they poured it out of the bottle into the glass,—and we drank from the glass. They gave us a drink, which we drank in each instance. When we drank the drink we asked for a bottle of that drink, under some circumstances, and under other circumstances, we didn't ask for it. In each instance I saw the drink which was served to us in the bottle in which it was served, and, in those cases where we got a drink in a glass, I knew what the bottle contained before I drank the stuff, so that I was not deceived at any time by what I drank. In each instance where I ordered a drink and got it in a glass, and followed it up by an order of a bottle, in each such instance I saw it was a bottle of "Koke" that had been served me in the glass before I ordered it; and in each instance where I failed to order a bottle to take away with me, I was

(Deposition of B. J. Gillon.)

satisfied it was "Coca-Cola." Yes, sir; this is the first time I have testified in this case, this is my first service in this case and this is the first time I have worked on a case for the Coca-Cola Co. No, I am hardly able to testify from memory what saloons we went to on these occasions without you called out the saloon—we just rambled, had no particular route, no particular saloons to go to. **[559]** You say that, but for the labels or subscriptions on these bottles, I wouldn't be able to recall the name of any place we went into; I can't recollect the names of four saloons that sold us "Koke" instead of "Coca-Cola." Yes, sir, I recollect the names of four saloons whose names I have seen on these bottles. I don't believe I could recall the name of any of the other places we went into because we never paid any attention to those; after we were served with "Coca-Cola" we just dropped that. Yes, sir, it is a fact that some of the places told us that they had "Koke." There is one saloon, particularly, which I remember over here on Iverville Street, where the bar-keeper told us that he didn't have "Coca-Cola," but that he had "Koke." No, sir; I can't recollect any other names; there were only three of them that notified us of that fact. You say it wouldn't be hard to remember those; that has been over a year ago, and I have been on a dozen or two operations since then—not for the Coca-Cola people, but for other people. Yes, sir; we went out for the purpose of trying to find people who would substitute "Koke" for "Coca-Cola," that's the truth. That's what we were hunt-

(Deposition of B. J. Gillon.)

ing for. Now coming back to the incident of the Rausch saloon—I said it was on Court and Rampart Streets. In company with W. J. Cheevers, and Mr. Cain and Mr. Friend, we went into the saloon and Mr. Cain asked Mr. Rausch if he remembered the argument that he used to him to get him to take a product called "Koke," you know; of course, he admitted telling them they could substitute it for "Coca-Cola." Cain went on and used those words and asked Rausch did he remember the argument and Rausch said yes, he used the argument that he was to sell "Koke" for "Coca-Cola," but he wouldn't take any, knowing "Koke" was a poor seller and wouldn't be satisfactory to his trade. [560] I don't know whether this Rauch is an American, German or a Frenchman,—I am not a judge of nationalities—apparently he is an American. He is a man, I guess, about in his thirties. He went on and repeated it just as I have told it here. Cain put that argument to Mr. Rausch. I am sure Cain told the man in my presence and in the presence of Cheevers, that he, Cain, had argued to him in the words I have used. Yes, sir, I am sure Cain said that. No, sir, I cannot be mistaken about that. If you told me that it had been testified here that Mr. Cain didn't say that, but that somebody asked the question of the bar-keeper, whether he remembered what Cain had said, and the bar-keeper then proceeded to repeat what Cain had said, I would say that my statement is right as against Cain's. I stand by my statement. The bar-keeper never repeated anything,

(Deposition of B. J. Gillon.)

Cain said it. Cain said to the bar-keeper what he had previously said, but the bar-keeper did not repeat that to us. He merely said that he remembered it, and, also, that he wouldn't put "Koke" into his bar because it was known as a poor seller.

Deposition of Pierre Auguste Capdau, for Plaintiff.

PIERRE AUGUSTE CAPDAU.

Direct Examination by Mr. ROGERS.

I am a pharmacist and have three stores, one at the corner of Charters and Canal Streets, one at Rampart and the other at 520 Canal St., all in New Orleans. I have been in the drug business for thirty years. I have soda-fountains at each one of my stores. I have had soda-fountains in the past, and got out of it, but, when I came into the main store about three or four years ago, then I became actively engaged in the soda business again. Before that I had operated soda-fountains off and on, I suppose, maybe for twenty years or more, probably for twenty-two or twenty-three years, possibly longer—for twenty-five years. Yes, sir; I am familiar with the product sold under the name "Coca-Cola" and have handled it off and on within, I should say, all that time—may be twenty or twenty-five years. Yes, sir, the advertising of "Coca-Cola" has always been extensive. The Coca-Cola of Atlanta, Ga., is the maker of "Coca-Cola." Yes, sir, I, myself, am around the soda-fountain in my various stores so that I can hear the names people use in ordering drinks. [561] You ask me to state, when people

(Deposition of Pierre Auguste Capdau.)

order "Coca-Cola" at my fountains, what names they use to indicate that they mean "Coca-Cola," and want that; some will say "give me a 'koke'" and some others will say "give me a 'dope,'" and still others will say "give me some drug"—they all use a humorous expression, or a slang expression, and it always indicates the one thing—and that is "Coca-Cola." (Mr. LITTLETON.—"We renew the same objections we have heretofore made. Note our same general objections to this line of testimony.") In response to the names I have indicated we supply "Coca-Cola." We have never had it rejected on the ground that it was not what was asked for. Yes, sir, I recollect an interview which I had a few months ago with some man, who represented himself as a representative of the Southern Koke Co. I think it may have been sometime in May of this year. Some gentlemen was in the store and he said "you don't handle 'Koke' or 'Dope,' do you?" I said, "Yes, sir, I sell 'Coca-Cola.'" "Oh, that ain't right,' he said, "We have got a trademark on the names 'Koke' and 'Dope' and you ought to sell it; every time you are doing that, you are violating the law." "Well," I said, "I don't see how—I have never known of a man who asked for 'dope' or 'koke,' at my fountain but what indicated a desire for 'Coca-Cola'"; and he says, "you will have to discontinue that because if you don't discontinue it, why it might cause you some trouble." I says, "Well, I will tell you, I will look after the trouble; I am convinced when a man comes in here and says

(Deposition of Pierre Auguste Capdau.)

he wants 'koke' or 'dope,' he actually means 'Coca-Cola' and I have never had a man to contradict me on that score, except you, sir." "Well, he says, "we'll get at that, we'll get at that," something to that effect. He left and I have never heard from him since. No, I did not ask this man what he would have understood if a person had asked for "koke" or "dope" if he had been running a drug-store five or six years ago; you see, I wasn't really doing the arguing with this individual; he simply was inviting it, and, naturally, I wasn't going into it, but I did say to him this: That, in all of my experience, I have never had any difficulty in giving a man "koke" or "dope" whenever he would ask for it and I did feel as though that expression had been used for so long a time I couldn't really see where he could have had a trademark or [562] a patent on the words. "Well," he says, "we have got it, and you will hear from it, you may hear from it yet on that subject." I said, "go ahead, old man, these are my views and I stand by them; I feel that every time a man asks for "koke" or "dope" he means "Coca-Cola.' "

Cross-examination by Mr. DART.

No, I don't know the man that called on me, and I can't say that I had a personal acquaintance with him; I think he is a man, I suppose, about five feet ten, or nearly six—I guess nearly six feet, dark complexion, dark hair, if I recollect it, a black mustache. He seemed to be a little nervous about it, he didn't himself stay very long, he seemingly delivered his

(Deposition of Pierre Auguste Capdau.)

message and then went off. He didn't give his name. I can't recollect ever having seen him before; I may have seen him, but I couldn't recollect it, and, of course, I haven't seen him since. If I remember right, this occurred in May of this year; I think it was May; I had no special reason, you know, for making a record of that fact. You ask me to repeat what this man's opening words were; well, at first he was in a rather cheerful way and said to me, if I recollect it well, "You don't handle," or "do you handle," or "you don't handle 'Dope' and 'Koke,' do you?" Or "You have never handled it," something to that effect. Those were his first words to me. I think he had just made a purchase, and after making this purchase, and speaking to some one in the store, in a rather cheerful tone, he began in that way, but afterwards he seemed to become angered at the fact that I did tell him that when a man asked for "koke" or "dope" he, in my opinion, meant "Coca-Cola" and that I had never seen anybody reject "Coca-Cola" when they asked for "koke" or "dope." Yes, sir, he did say that he had some connection with this Company,—that is, with the Company that manufactured these goods, either "Koke" or "Dope," and he said "why we have a trademark, we have those words, trademarked or patented," or whatever his expression may have been at that time, which lead me to understand that, from his point of view, he could give me trouble if he chose to, and get after me. He didn't say what Company it was, just simply said "we have," and I assumed from

(Deposition of Pierre Auguste Capdau.)
that it was something he had to do with. He spoke with some authority, too, he was a little angered and spoke rather forcibly for a time. He used the word [563] "we," but didn't disclose his identity, I don't recall his disclosure. I can't recollect his giving me the name of his concern. Oh, yes, sir, I have been handling "Coca-Cola" for many years. I bought it through their agents here in New Orleans. I know that it is manufactured by an Atlanta concern because the labels on the packages indicate that. Every fence in the city, I suppose every nook and corner of the country it is possible to cover with an advertisement, is covered with the words "Coca-Cola." I believe I have seen "Coca-Cola advertisements in New Orleans, lately. It has got to be such a thing with me that if I don't see a "Coca-Cola" sign somewhere I think there is something wrong—I want to say that I just came from the mountains and right on Pike's Peak, I saw the "Coca-Cola" sign there, right on top. In New Orleans, particularly, you can see them around town, but I haven't paid any special attention to it recently. That is what I mean by advertising. Then in the press, I see it in the press, I don't know but what it may be running now in the papers, pick up most any journal or magazine and you will find "Coca-Cola" in it. You ask if my mind is attracted to any other soft drinks of that nature to know whether they are advertised or not; well, occasionally I see an advertisement—"Afri-Cola," and some other cola drinks, but not in the same way. These advertisements that

(Deposition of Pierre Auguste Capdau.)

I usually see don't impress me as being serious advertising, but simply sporadic—break out occasionally. No, I am not interested specially in "Coca-Cola." You say that when you are used to seeing a certain thing it shuts out your vision of things which you are not interested in; I shouldn't say that as applied to myself; I am equally interested in seeing what is going on in a general way in the business. If there was a demand for other goods of like character, as we have always done, we put it in stock and see what the merits of the article is. You ask if I have ever handled these other soft drinks in opposition to "Coca-Cola"; well, I tell you I was waited upon to sell drinks "Koke" and "Dope,' but I couldn't see my way clear to do it. I guess that was about a year or perhaps two years ago. I think perhaps our poor friend who was killed, I believe he was president of the company, I think, at that time, and some one else, came to see me and I was [564] very plain about it, I told them exactly how I felt. Yes, sir, I knew there was a concern pushing "Dope" and "Koke," I did hear of it, for they had offered "Koke" and "Dope" to me, and I didn't like the line of argument that was advanced at that time, and for that reason, I didn't take it. Yes, sir, it's possible that people who are pushing a new line have a harder time to get in.

Deposition of O. P. Bland, for Plaintiff.

O. P. BLAND.

Direct Examination by Mr. HIRSCH.

I reside at 641 St. Charles St., New Orleans. I have a restaurant and confectionery, soda-water and icecream business. I have been in that business since the first of November. Before that I was train-dispatcher for the Texas and Pacific Railroad for about four years and before that I was in the general merchandise business at Wilson, La. Yes, sir, I now run a soda-fountain in connection with my business. Most everything you want in the matter of soft drinks is sold from my fountain, except I don't handle "Glee-Nal" or "Koke." I handle most everything else, including "Coca-Cola." Yes, sir, I see "Coca-Cola" advertised around extensively. Yes, sir; people coming to my place of business use other names besides "Coca-Cola" in calling for "Coca-Cola," such as "koke" and "dope." I understand those names to apply to "Coca-Cola." Now, I want to tell you if I handled "Koke" or anything they call "dope," and I handled "Coca-Cola,"—I handled all three—and a man came in and asked for "koke" I would give him "Koke," if he asked for "dope" I would give him "Dope," if he asked for "Coca-Cola" I would give him "Coca-Cola, but I handle only the one, and, consequently, I give him only that, and that is "Coca-Cola." Yes, sir, I supply "Coca-Cola" in response to all such requests.

(There was no cross-examination of this witness.)

Deposition of J. A. Condon, for Plaintiff (Recalled).

J. A. CONDON (Recalled).

Direct Examination by Mr. HIRSCH.

Yes, sir, I testified on the stand yesterday about certain investigations I had made. I made between ninety and ninety-five visits in the city of New Orleans. In about thirty-four places where we called for "Coca-Cola," "Coca-Cola" was served to us. In those places we did not get a bottle of it after it was served to **[565]** us. In about eight places, I guess, we were served with this product "Koke," in response to calls for "Coca-Cola." Now, let's see, I went to about two places where they told us they didn't have "Coca-Cola" but had "Koke." Three of the others stated they had pop, and about thirty-six places claimed they didn't sell "Coca-Cola"; ten places said they didn't have "Coca-Cola." In those places we went into we didn't buy any bottles, or take away any bottles, where they served us "Coca-Cola" in response to orders for "Coca-Cola," or where they told us they had pop and didn't have "Coca-Cola." The only places we took samples were where they served us "Koke" for "Coca-Cola." Mr. Bogner was with me in those rounds.

Cross-examination by Mr. DENT.

You say that you imagine I didn't have a list prepared for me of the customers of "Koke"; no, sir; not in all cases. Now, we had instructions to go wherever we saw a "Koke" sign,—a "Coca-Cola" sign,—to enter the place and ask for "Coca-Cola."

(Deposition of J. A. Condon.)

Oh, no, sir; we couldn't cover all the soft drink places in New Orleans. I had been furnished with a list of some places, but not all of them. I don't know how many places we had a list of. Not all of the places which served us "Koke" for "Coca-Cola" carried "Koke" signs; some had "Coca-Cola" signs and some had "Koke" signs. No, sir; I am not able to distinguish from memory which stores had which signs; I will have to look at my report on that; we made a report stating whether they had "Koke" signs or "Coca-Cola" signs.

Deposition of O. C. Turrell, for Plaintiff.

O. C. TURRELL.

Direct Examination by Mr. HIRSCH.

I am assistant superintendent of the New Orleans office of the Pinkerton National Detective Agency. Yes, I know Mr. Gillon, Mr. Condon, Mr. Hogan and Mr. Bogner. I gave them instructions about the investigations made. When we received instructions from our Atlanta office to collect this information and evidence in connection with the Koke Company, I instructed the operatives together,—that is Condon and Bogner together, and Hogan and Gillon,—they worked in pairs—and they were instructed to call, practically hit or miss, on the local dealers to determine whether or not any of them were substituting any imitation **[566]** of "Coca-Cola." We were unable to determine, positively, exactly who was handling the substitute. We did know in a general way who the bottlers for the Koke

(Deposition of O. C. Turrell.)

Company were calling on, but we did not know positively that the people these bottlers were calling on were handling "Koke" or any other substitute for "Coca-Cola"—the fact that they would call on a dealer wouldn't be an indication that they were handling a substitute. They might be selling pop or ginger-ale or root beer or whatever it is they buy. The only thing we could do under the circumstances was to call on these people and find out those that were handling "Koke." These men called, I suppose, on a hundred people, and, as we found—they were instructed, as they would find a dealer that was handling "Koke" or any other substitute for "Coca-Cola," to go in and ask plainly and distinctly for "Coca-Cola" and not ask for "koke" or "dope" or any other of the nicknames for "Coca-Cola." For instance they would go up to the bartender, or the bar, and say to the man that was to serve them, "give me a bottle of "Coca-Cola," stating "Coca-Cola" plainly and distinctly; this man would serve them, and, if he served them with genuine "Coca-Cola," they would drink it, or take a swallow or two of it, whatever they did, and walk out and we were through with that particular man; if the man said "we don't handle 'Coca-Cola,' " or "we haven't got 'Coca-Cola,' but we have got 'Koke,' " they would probably purchase a drink and we would leave that man alone; but if they would go into a dealer or a saloon-keeper, whoever it might be, and ask for a "Coca-Cola" and were served with a substitute, they would drink the substitute and

then say to the bar-tender "give me a bottle of 'Coca-Cola' to take away with me and wrap it up," and pay him for this bottle and carry it away; and then they would number it as you find these samples here.

Cross-examination by Mr. LITTLETON.

What I have just been telling were the instructions given by me to the men. Of course, I didn't go with them. Yes, sir; this is a part of our work as a detective agency. We were paid for it at the per diem rate, for each man detailed. All we got out of it was so much per man, that is the only way we operate. The rate has been changed—our regular rate for operations is $8.00 a day for each man and expenses necessarily incurred in connection with the work. **[567]** I believe we got that in this case. Since that time the Coca-Cola Company has been granted a special rate of $6.00 a day, which is the lowest rate we make, but I believe in this particular case we charged them at the rate of $8.00 a day. When I say we have made them a special rate I mean that our concern has made that rate for them all over the United States, so that they have the services of the Pinkerton Detective Agency all over the United States. Of course, a special rate is granted because they give us a considerable amount of their business. We grant that same rate to the large express companies and to a good many of our clients who give us a considerable amount of work each year. They are valuable customers to us and we make them a special rate. We can well afford to give a man a special rate where he gives us work

(Deposition of O. C. Turrell.)

for several men running thirty days or more, where we couldn't give you, as an attorney, for instance, for two or three days investigation, a special rate; the executive work in connection with an operation of that sort isn't so great,—that is the supervision isn't so great in a matter that runs on from day to day, it doesn't require the same careful supervision. In my testimony a while ago everything I said there was in the way of instructions to those operators. You call attention to the fact that I used the word "substitute" in my testimony, and you say that you suppose in using that I am not giving my personal testimony, but the instructions of my clients as to what I was to try to find out; I was told by my employers that these things were "substitutes" or "imitations," and that is why I gave this instruction —I don't mean by my testimony that I told my men on the theory that, in my opinion, those things were "substitutes," I didn't decide that question. We started the operation with the assumption that "Koke" and "Glee-Nol" and "Gay-Ola" and similar beverages were "imitations" of "Coca-Cola." "XQ. 10. Now you mean to say that the whole Pinkerton Agency has established that as a rule, that these things are imitations"? "A. Well, those are instructions." "XQ. 20. From where?" "A. Our Atlanta office, coming directly from the Coca-Cola Company." It isn't up to us to decide whether any beverage is an imitation of "Coca-Cola." [568]

Redirect Examination by Mr. HIRSCH.

Yes, sir; we only charge the Coca-Cola Company

(Deposition of O. C. Turrell.)

our regular charges that we charge other people, except that we made a reduction as I have stated. No, sir; we don't get another cent from them in any way, shape or form. No, the men don't get any money in addition to what I pay them—they don't if they expect to stay in the employ of the Pinkerton Agency, we wouldn't have a man to do that. No, sir; as far as I know the operatives have never received a cent except from the Pinkerton National Detective Agency. I pay them a regular monthly salary.

Deposition of H. W. Flowers, for Plaintiff.

H. W. FLOWERS.

Direct Examination by Mr. HIRSCH.

I live at 2478 Royal St., New Orleans. I am head dispenser for Capdau, druggist. I have been working at that line of work six or seven years, but I have been with Mr. Capdau only 4½ or 5 years. All popular drinks are sold at that soda-fountain, such as "Coca-Cola," icecream sodas of all kinds, phosphates of all kinds, etc. I have known this drink "Coca-Cola" ever since I have been in business. Yes, sir; I have seen it advertised extensively. Yes, sir; I have heard the names "dope" and "coke." If a man comes to my soda-fountain and asks for "dope" or "coke" I understand that he wants "Coca-Cola." Yes, sir, that is applied to "Coca-Cola," generally.

(Deposition of H. W. Flowers.)

Cross-examination by Mr. LITTLETON.

I am thirty years old. No, I have sold no other drink of the Coca-Cola kind other than "Coca-Cola." I have sold nothing but "Coca-Cola."

Deposition of J. A. Condon, for Plaintiff (Recalled).

J. A. CONDON (Recalled).

Direct Examination by Mr. HIRSCH.

Yes, sir; I stated this morning that I saw some "Koke" signs, small paste-board, I guess, about 12 inches. I saw those signs in, I guess, five or six saloons.

Cross-examination by Mr. DART.

Yes, sir; I have been on the witness-stand three times in this matter so far. You ask if mine is the kind of memory that **[569]** has to be refreshed in order to remember a little item of that kind; well, it wasn't asked me this morning, was it? You say that, in other words, I have no independent memory of anything unless I go back and get a memorandum of some kind; I could have told you about how many places, this morning. Oh, yes, I did know about this sign before I refreshed my memory but you didn't ask me about it this morning. You say who asked me to come here and testify and you say you know you didn't; I have been over at the office and they asked me to come back over here; I don't know who sent for me.

Deposition of Frank P. Killilen, for Plaintiff.

FRANK P. KILLILEN.

Direct Examination by Mr. HIRSCH.

I live at 3517 Canal St., New Orleans. I have lived here all my life, since 1880, practically. I am in the cooperage business, with which business I have been connected for eleven years. In the course of my business I have had talks with the Southern Koke Company but have never sold them any barrels. It must have been about sixteen or eighteen months ago, now—people representing these people came out to our place to buy these "Coca-Cola" barrels and said that they only wanted to buy "Coca-Cola" barrels and said they didn't want to buy any other barrels except "Coca-Cola" barrels, half barrels or kegs. I went and told Mr. Freeman about it, that we had trouble selling these "Coca-Cola" barrels for different purposes and these people said it would suit them—in fact that was the only barrel that suited them. We didn't have them and I told them he could get them from Peter Milhaus over on Rampart Street and I understood he had sold them. They said they had to have fresh barrels, didn't need to scrape them or anything else of the kind. They wanted me to pick them up and bring them to them every day that I could get them. No, nothing was said to me about the labels. Yes, sir; I went to the place of business of the Southern Koke Company to look that gentleman up,—when we are going to sell a man barrels we look around his place to see what it looks like. After looking over the matter I de-

(Deposition of Frank P. Killilen.)

cided not to sell them. Yes, sir; I had a conversation with some one there. I told him who I was, you know, told him my business, and he wanted to know if I was going to give them any barrels. I am not positive of it, but I think I told him— **[570]** you understand—in effect—that I intended to sell them these barrels—because, of course, the price was very satisfactory and everything—until I spoke to Mr. Freeman, or some one connected with his place; and they said "haven't you got any other use for our barrels?" You know, we buy these barrels from the Coca-Cola people and have an arrangement with them to take all their barrels, and, if we have no sale for those barrels, we can ship them back to Atlanta, but as long as we can deliver them here—I don't know whether it is of interest to you, but it is a fact, that the freight being so high to Atlanta, we get better prices here.

(There was no cross-examination of this witness.)

Deposition of Albert J. Miller, for Plaintiff.

ALBERT J. MILLER.

Direct Examination by Mr. HIRSCH.

I live at 2427 Rampart St., New Orleans. I have lived in New Orleans all my life—born here. I have been in the saloon business but am now in the confectionery business. I was first with Ramos as manager for Brasios. Yes, sir; they have a soda-fountain business. All soft drinks that you can get from the soda-fountain are served at their fount—no hard drinks. Yes, sir, I sell "Coca-Cola" and am selling it

(Deposition of Albert J. Miller.)

there now, the sixth year. I have known "Coca-Cola" about fifteen or eighteen years. Yes, sir; the drink "Coca-Cola" is advertised extensively. I think it is the best advertised in the country. Yes, sir; we have calls at our fount for a drink under the name of "Koke." When a person calls for a drink of "koke" I understand that they mean "Coca-Cola" and I serve "Coca-Cola" when they ask for it. They ask for "koke," and "dope," too, that's a nickname.

Cross-examination by Mr. DART.

No, sir; we handle no other cola drinks, only I get this "Glee-Nol,"—outside of the regular syrup we make ourselves. Yes, sir; I am now handling "Glee-Nol"; we sell about a quart in six months. Outside of that we handle nothing else but our own syrup which we make, such as strawberry, vanilla, raspberry, etc. No, sir; we have handled no other drinks; we have handled "Gin-fiz—Fan Taz, I mean,—but it lasted only about a month and it was all over with. Yes, sir; "Glee-Nol" is a very recent drink. [571]

Deposition of Fred Schwartsenburg, for Plaintiff.

FRED SCHWARTSENBURG.

Direct Examination by Mr. HIRSCH.

I am now living on Canal Street in New Orleans. I am managing Katz & Besthoff's soda-fountain. I have been with them the last time about three years, but I was with them before that for about the same length of time. We dispense at the soda-fountain the drinks that are commonly called for. We serve all kinds of soda-fountain drinks, including "Coca-

(Deposition of Fred Schwartsenburg.)

Cola." We have been serving this drink known as "Coca-Cola" for several years and I have known it for several years. Yes, sir, that drink is advertised a good deal. You ask what names are used at our fountain in calling for "Coca-Cola," "dope" and "koke"—any name that they think we'll understand that they want "Coca-Cola." When they use these various names I understand that they want "Coca-Cola" and that it applies to "Coca-Cola."

Cross-examination by Mr. DART.

No, sir; we don't sell any other cola drinks, nothing but "Coca-Cola." We never have had anything to do with other drinks of that same kind. When they do use "koke" they mean "Coca-Cola." Oh, yes, they use the names "koke" and "dope" and anything they think you will recognize they mean "Coca-Cola." If a man came in there and asked for anything that didn't express the name of some other soft drink—anything sounding like "koke" or "Coca-Cola" or "dope"—we would give them "Coca-Cola." I have never heard a fellow call it a "shot" or "poison." I am 24 years old.

Deposition of R. W. Brown, for Plaintiff.

R. W. BROWN.

Direct Examination by Mr. HIRSCH.

I live at 803 Pine St., New Orleans. I have been living here since the 15th of February of this year. Before that I lived in Vicksburg, Miss. I am now in the soda-water business and I was in the same business at Vicksburg. We sell all the soft drinks,

(Deposition of R. W. Brown.)

"Coca-Cola," phosphates, sodas. Yes, sir, "Coca-Cola" is advertised extensively, and in Vicksburg very much so. Yes, sir; I have seen it advertised in New Orleans. Yes, sir; I have heard the names "koke" and "dope" used at our fountain. They apply to "Coca-Cola," that's what we generally give them when people use that nickname; they hardly ever call for [572] "Coca-Cola," they say "dope" or "koke," something like that.

Cross-examination by Mr. DART.

Well, yes, sir; we have had a drink similar to "Coca-Cola" such as "Cola-Ade," I believe, is the name of one, and there is several substitutes on the market. I haven't had any of those since I have been in New Orleans, haven't handled anything but "Coca-Cola," that's since I have been head of the fountain, but there is a bunch of drinks on the market similar to "Coca-Cola." I don't recollect the names of all of them, but there are quite a number of them. I think there is one called "Cola-Ade." No, sir; I never handled them in Vicksburg, I never handled anything but "Coca-Cola." No, sir; we have never handled anything but "Coca-Cola" in that line—of course, we have had other drinks, such as orange-ade and celery and other drinks. I didn't say that we have ever handled any of those drinks similar to "Coca-Cola." What I did say was that there are such drinks on the market.

(The following depositions were taken by the plaintiff at Dallas, Texas, from August 7th to August 12th, inclusive, 1914.)

Deposition of Frederick Conway Peace, for Plaintiff.

FREDERICK CONWAY PEACE.

Direct Examination by Mr. ROGERS.

I am 29 years old, live in Atlanta, Ga., and am an investigator for the Coca-Cola Co. Before my employment by the Coca-Cola Company I was an operative in the employ of the Pinkerton National Detective Agency. Since my connection with the Coca-Cola Company my duties have been to investigate soda-fountains to see if they were selling "Coca-Cola" and not using substitutes, and, also, to determine the meaning of the words "koke" and "dope" at soda-fountains. In the course of my investigations I have traveled over the States of Mississippi, Louisiana, Alabama and Texas. In Mississippi I visited Hattiesburg, Biloxi, Bay St. Louis, Collins, Poplarville, and Ellisville. In Louisiana I visited New Orleans. In Texas I visited Dennison, Sherman, Van Alstyne, McKinney, Cleburne, Ft. Worth, Dallas, Oak Cliff, a suburb of Dallas, Arlington and Grand Prairie. When I would go into a town I would pick out the first-class drug-stores if they had soda-fountains, and the first-class confectionery stores. [573] The towns I visited and the places I visited were not selected for me by any one; I picked them out after I got to the different towns. No, I did not observe any particular rule in picking out places or stores. After having selected a store I would go in and call for a "Coca-Cola," I would observe from which spigot the syrup to make the drink

(Deposition of Frederick Conway Peace.)

was drawn and I would also observe from which spigot other drinks than "Coca-Cola" that were called for by customers that came in, were drawn,—those who came in and called for other drinks while I was standing there. I remained in each store anywhere from twenty to thirty minutes and during the time I would be in the store I would observe from what spigot the drinks to make "Coca-Cola" "koke" and "dope" were drawn to see if they were all drawn from the same spigot or if there was a distinction made in the spigot for the three drinks. Later on in the day I would call again at the same store and call for "dope" and would again observe which spigot the syrup to make that drink was drawn from, and would also observe from which spigot the syrup to make drinks served in response to calls for "Coca-Cola" and "koke" by other people at the fountain were drawn from, in order to see if they were all drawn from the same spigot. Later in the day I would again call at the same store and ask for a "koke" and would observe from which spigot the syrup to make that drink was drawn, and, while at the fountain, I would also observe from which spigot "dope" or "koke" and "Coca-Cola" were drawn from that were called for by other people who might be at the fountain at the same time. Later on I would call on the manager of that store, or the proprietor, or whoever was in charge, and introduce myself to him, telling him who I was, and what my mission was, and would ask them what they understood the words "koke" and "dope" to mean and

(Deposition of Frederick Conway Peace.)

what they served in response to requests for "koke" and "dope," and in each and every instance they told me that they thought when a man called for a "koke" or a "dope" he wanted and meant "Coca-Cola" and that "Coca-Cola" is what they served in response to such requests.

Following is a tabulation showing the establishments visited by me at the cities indicated, at the soda-fountains in each of which places, on separate occasions, I called for "Coca-Cola," "koke" and [574] "dope" and also observed customers using those words. The syrup to make all the drinks served in response to calls for "Coca-Cola," "koke" and "dope" which I observed at each of these places, was drawn from one and the same container in the fountain.

City Drug Store, Hattiesburg, Miss.
Yellow Pine Drug Store, Hattiesburg.
Fields Drug Co., Hattiesburg.
Moore Grocery Store, Hattiesburg.
Capdau Drug Co., New Orleans, La.
Williams Pharmacy, New Orleans.
Katz & Besthoff, New Orleans.
W. L. Brown Pharmacy, New Orleans.
Peters Pharmacy, New Orleans.
Osenwald & Gross Drug Store, New Orleans.
Kirby Five Cent Store, New Orleans.
Economical Drug Co., New Orleans.
Louisiana Candy Store, New Orleans.
Cusach's Drug Store, New Orleans.
Katz & Besthoff Store, New Orleans.

Lopez Confectionery Co., New Orleans.
F. O. Blaine's Restaurant, New Orleans.
Frank L. Simmons Pharmacy, New Orleans.
Philadelphia Ice Cream Co., New Orleans.
Power Drug Store, Bay St. Louis, Miss.
J. A. D'Aquin Drug Co., Biloxi.
Rush-Grayson Drug Co., Biloxi.
W. L. Grant Pharmacy, Biloxi.
Porter Pharmacy, Biloxi.
Biloxi News Stand, Biloxi.
Scranton Pharmacy, Pascagoula.
Moore Grocery Store, Pascagoula.
A. E. Voyodzis, Pascagoula.
Pascagoula Pool Room, Pascagoula.
John H. Hill Confectionery Store, Moss Point.
Burnham's Pharmacy, Moss Point.
Southern Paper Co., Moss Point.
Parlor's Drug Store, Gulf Port.
Day Drug Co., Gulf Port.
Jones Bros. Drug Store, Gulf Port.
George Lambrakee's Soda Fountain, Gulf Port.
Stratakos, Gulf Port.
The Imperial Palm Parlor, Gulf Port.
City Drug Store, Lumberton.
T. H. Redmond, Lumberton.
C. Polato Grocery Store, Lumberton.
Poplarville Drug Store, Poplarville.
Collins' Restaurant, Poplarville.
J. W. Bradshaw Grocery Store, Poplarville.
Barry Drug Co., Columbia.
Barry Bros. Drug Store, Columbia.
Columbia Drug Store, Columbia.

Walker Bros. Drug Store, Columbia.
Collins' Drug Store, Collins.
Stovall Drug Co., Collins.
Jones Beacham Restaurant, Collins.
Scott's Restaurant, Hattiesburg.
M. W. Hyde Drug Co., Ellisville.
E. J. Ward's Pharmacy, Ellisville.
Sam Imbragnglio's, Ellisville.
C. A. Abbey & Son's Grocery Store, Ellisville. [575]
City Drug Store, Laurel.
Hattiesburg Drug Co., Laurel.
Century Drug Store, Laurel.
Scruggs' Drug Store, Laurel.
T. J. Wallace Drug Co., Laurel.
Pastime Pool Room, Laurel.
Waldrop's Pharmacy, Meridian.
Renfree Pharmacy, Meridian.
Ware & Kendall's Pharmacy, Meridian.
C. J. Woodruff Drug Co., Meridian.
McCorkle Drug Co., Meridian.
Paragon Pharmacy, Meridian.
Coleman's Pharmacy, Meridian.
Sugerman's Cigar Store, Meridian.
C. Camarinos, Sherman.
Palace of Sweets, Sherman.
Carl R. Noll Drug Co., Sherman.
Craycroft & Stinson, Sherman.
Langford & Keith's Drug Store, Sherman.
Watson's, Sherman.
Turner's Pharmacy, Sherman.
W. L. Bidding Drug Co., Sherman.
People's Pharmacy, Dennison.

Kingston Drug Co., Dennison.
Frank Maniolos, Dennison.
Reynolds Drug Co., Dennison.
Cross' Drug Co., Dennison, Texas.
Tony's Palm Garden, Dennison.
Tango, Van Alstyne.
Brown-Baker Drug Store, Van Alstyne.
J. J. Pitts Soda Fountain, Van Alstyne.
City Drug Store, Van Alstyne.
Hughes Restaurant, Van Alstyne.
Alcove Confectionery, McKinney.
Olympia Confectionery Store, McKinney.
Mitchell Drug Store, McKinney.
Smith's Drug Store, McKinney.
Dearmore & Hughes, Van Alstyne.
Hanner Drug Co., Dennison.
The Tango, Dennison.
Schrodt's Pharmacy, Dallas.
C. R. Smith's Pharmacy, Dallas.
Empire Drug Co., Dallas.
Palace Drug Store, Dallas.
Oriental Drug Store, Dallas.
T. J. Britton's Pharmacy, Dallas.
Tyler Avenue Pharmacy, Dallas.
Davis Confectionery Store, Dallas.
Bishop Avenue Pharmacy, Dallas.
Crystal Pharmacy, Dallas.
Mallory Drug Store, Dallas.
Titche Goettinger, Dallas.
Haskell Pharmacy, Dallas.
Blain Marshall Drug Store, Dallas.
Washington Ave. Pharmacy, Dallas.

Kirby & Blakeney's, Dallas.
Flagg Floral & Confectionery Store, Dallas.
North Dallas Drug Co., Dallas.
Fairmount Pharmacy, Dallas.
Oak Cliff Pharmacy, Dallas.
Gallett & Compton's Drug Store, Dallas.
McKinney Avenue Drug Store, Dallas.
Littlepage Pharmacy, Dallas.
Highland Park Pharmacy, Dallas.
Magnolia Pharmacy, Dallas.
New York Ice Cream Parlor, Dallas.
Gilliland Pharmacy, Dallas.
Oak Lawn Market & Bakery, Dallas.
Thomas' Confectionery Store, Dallas.
Farrow Linder Phar., Dallas.
Harper Confectionery Store, Grand Prairie.
Cooper Drug Store, Grand Prairie. [576]
City Drug Store, Grand Prairie.
Harry Harris Drug Co., Cleburne.
Foster & Fain's Drug Store #2, Cleburne.
C. F. Humphreys, Cleburne.
F. J. Campsey Drug Store, Cleburne.
Foster & Fain's Drug Store, #1, Cleburne.
G. E. Mecham, Cleburne.
Cyrus & Cyrus, Cleburne.
Crow & Walker's Drug Store, Cleburne.
M. A. Anderson, 700 Penn. Ave., Fort Worth, Tex.
R. A. Anderson, 706 Main St., Fort Worth.
Bessie Pharmacy, 1001 Bessie St., Fort Worth.
Bradford Bros., 3200 F. Avenue, Fort Worth.
J. P. Broshear, 1300 Main St., Fort Worth.
Canton Pharmacy, 515 Main St., Fort Worth.

Casey's No. 1, 1314 Terrell St., Fort Worth.
Casey's No. 2, 2338 Hemphill St., Fort Worth.
Clardy's Drug Store, 1600 Vickery Bl., Ft. Worth.
College Ave. Pharmacy, 1730 College St., Fort Worth.
Corner Drug Store, 1215 Cahoun St., Ft. Worth.
Jack Coulson, 101 North Houston St., Ft. Worth.
Coney & Martin, 810 Main St., Fort Worth.
Curby's Drug Store, 1407 Main St., Fort Worth.
Dillin Bros., 300 S. Jennings St., Fort Worth.
Evans Avenue Pharmacy, 915 Evans Ave., Fort Worth.
Exchange Drug Store, 107 E. Exchange St., Fort Worth.
Z. Gaither, 514 S. Main St., Fort Worth.
George's Pharmacy, 1415 E. Front St., Fort Worth,
Glenwood Pharmacy, 1421 Bessie St., Fort Worth.
Grammer Pharmacy, 100 Main St., Fort Worth.
Hickman & Clark, 1408 Main St., (N.) Fort Worth.
Hightower & Harrell Drug Co., 1216 Peach St., Fort Worth.
Johnston Drug Co., 801 Houston St., Fort Worth.
Jones Drug Co., 104 W. Exchange St., Fort Worth.
Lackey's Pharmacy, 102 W. Front St., Fort Worth.
R. T. Lee, 1220 Henderson St., Fort Worth.
Jones Drug Store, 900 Evans St., Fort Worth.
Lowes Drug Store, 11th & Jennings St., Fort Worth.
Metropolitan, Main St., Fort Worth.
Magnolia Drug Co., 1231 Hemphill St., Fort Worth.
R. E. Martin, No. 1, 215 S. Main St., Fort Worth.
Martin No. 2, 2001 Vickery Blvd., Fort Worth.
Model Pharmacy, 1101 College St., Fort Worth.

North Fort Worth Drug Co., 101 W. Exchange St., Fort Worth.
Nowlins Pharmacy, 400 N. Wheeler St., Fort Worth.
Owl Drug Co., 1312 N. Main St., Fort Worth.
Pangburns Drug Store, 501 Houston St., Fort Worth.
Pools Drug Store, 1200 First St., Fort Worth.
Puckett Drug Co., 1564 W. Magnolia St., Fort Worth.
Rafferty, F. L., 400 W. Bois d'Arc, Fort Worth.
Rattan Pharmacy, 211 E. 15th St., Fort Worth.
Reeves Pharmacy, 12th & Jennings St., Fort Worth.
Renfroe Pharmacy, 11th & Main Sts., Fort Worth.
Renfroe Drug Co., 315 Main St., Fort Worth.
E. T. Renfroe & Co., 915 Houston St., Fort Worth.
Renfroe Drug Store, 715 Main St., Fort Worth.
Smythe Drug Co., 2407 N. Main St., Fort Worth.
F. J. Stangl Drug Co., 1300 Hemphill St., Fort Worth.
Temple Drug Co., 405 E. 9th St., Fort Worth.
10th Ward Drug Co., 2263 Hemphill St., Fort Worth.
Walkup Drug Co., 1610 Main St., Fort Worth.
M. D. Wallace, 321 N. Elm St., Fort Worth.
Webb's Drug Store, 200 Main St., Fort Worth.
Wilson's Drug Store, 1514–A Main St., Fort Worth.
Wofford-Powers Drug Co., 813–15 Houston St., Fort Worth.
Belknap Drug Co., 201 E. Belknap St., Fort Worth.
Hassell's Drug Co., 504 Main St., Fort Worth. [577]
J. H. Boord, 1265 Evans St., Fort Worth.
Montcastle Drug Co., 1231 S. Main St., Fort Worth.
Transfer Drug Co., 1218 Houston St., Fort Worth.
Twentieth Ward, 200 N. Main St., Fort Worth.

Booth Bros., 807 Houston St., Fort Worth.
Duchich & Co., 609 Houston St., Fort Worth.
H. B. Jones Con. Co., 101 Main St., Fort Worth.
L. M. Mitchell & Co., 911 Main St., Fort Worth.
Royal Con. Co., 1012 Main St., Fort Worth.
Tupolis Confectionery Co., 1112 Main St., Fort Worth.
Lake Como, Lake Como St., Fort Worth.
Joseph Rocugno Confectionery, 1510 Main, Fort Worth.
P. G. Chopmond, S. Jennings St., Fort Worth.
Kelly Bros., 128 Jennings St., Fort Worth.
Union Depot Fountain, Union Depot, Fort Worth.
J. E. Brenner, 204 Main St., Fort Worth.
Club Confectionery, 1600 Back E. Front St., Fort Worth.
Palace Drug Store, Arlington.
Rexall Drug Store, Arlington.
Corner Drug Store, Arlington.

In the following tabulation the first column indicates the name of the proprietor, manager or dispenser whom I interviewed and secured a statement from as to his understanding of the meaning of the words "koke" and "dope"; the second column indicates the establishment, and the third column the city and State. After making spigot tests in each of these stores by asking for "Coca-Cola," "koke" and "dope" on separate occasions and observing that the syrup to make all drinks served in response to each of these calls was drawn from one and the same container in the fountain, I then interviewed the manager, proprietor or dispenser, as the case happened

to be, introduced myself to him, informed him of the object of my visit, and disclosed to him the result of my spigot test, and then asked him what he understood the words "koke" and "dope" to mean. In each instance the manager, proprietor, or dispenser stated that he understood that the words "koke" and "dope" are used by the public as nicknames for "Coca-Cola." Following is the tabulation referred to:

Ames, Mgr., City Drug Store, Hattiesburg, Miss.

Jones, Prop., Yellow Pine Drug Store, Hattiesburg.

Fields, Prop., Fields' Drug Co., Hattiesburg.

Edwardson, Prop., Moore Grocery Store, Hattiesburg.

Capdau, Prop., Flowers, Disp., Capdau Drug Co., New Orleans, La.

A. A. Kaczovoski, Mgr., Evan Douch, Dispenser, Williams Pharmacy, New Orleans.

F. E. Suter, Mgr., Katz & Besthoff, New Orleans.

W. L. Brown, Prop., W. L. Brown Pharmacy, New Orleans.

Charles T. Peters, Peters' Pharmacy, New Orleans.

Savaghier, Mgr., Osenwald & Gross Drug Store, New Orleans.

F. S. Dean, Mgr., Kirby Five Cent Store, New Orleans.

George F. Moss, Mgr., Economical Drug Co., New Orleans. [578]

J. C. Capdenax, Prop., Louisiana Candy Store, New Orleans.

A. B. Friel, Mgr., Cusach's Drug Store, New Orleans.

Fred Schwartzenburg, Mgr., Katz & Besthoff, New Orleans.

Lopez Confectioner Co., New Orleans.

P. O. Blaine, Prop., P. O. Blaine's Restaurant, New Orleans.

H. S. W. Code, Mgr., Frank L. Simmons Pharmacy, New Orleans.

William Rappold, Mgr., Philadelphia Ice Cream Co., New Orleans.

L. N. Power, Prop., Chris Gibbon, dispenser, Power Drug Store, Bay St. Louis, Miss.

J. A. D'Aquin, Mgr. & Prop., J. Morris & Catshot, dispensers, J. A. D'Aquin Drug Co., Biloxi.

Dr. Rush, Prop., Rush-Grayson Drug Co., Biloxi.

Grant, W. L. Grant Pharmacy, Biloxi.

Joseph L. Brenners, Porter Pharmacy, Biloxi.

E. Berkley, Biloxi news stand, Biloxi.

Dr. McBay Young, Prop., Scranton Pharmacy, Pascagoula.

Moore, Mgr., Moore Grocery Store, Pascagoula.

A. E. Voyodzis, Prop., A. E. Voyodzis, Pascogoula.

Mike Nomane, Prop., Pascagoula Pool Room, Pascagoula.

John H. Hill, Prop., John H. Hill Confectionery Store, Moss Point.

Mr. Burnham, Burnham Pharmacy, Moss Point.

Dr. Sharp, Mgr., Southern Paper Co., Moss Point.

J. W. Culver, Mgr., J. O. Baker and Lewis Mossino, dispensers, Parlor's Drug Store, Gulf Port.

Mr. Day, Prop., Day Drug Co., Gulf Port.

Dr. H. H. Jones, Mgr., Jones Bros. Drug Store, Gulf Port.

George Lambralsey's Soda Fountain, Gulf Port.
Lewis Stratakos, Lewis Stratakos, Gulf Port.
W. K. Porter, The Imperial Palm Parlor, Gulf Port.
Dr. T. P. McInnis, Prop., City Drug Store, Lumberton.
C. Polato, Grocery Store, Lumberton.
Dr. Fred W. Smith, Mgr., Poplarville Drug Store, Poplarville.
Miss Kate Collins, Prop., Mrs. C. W. Cleghorn, dispenser, Collins' Restaurant, Poplarville.
J. W. Bradshaw, Grocery Store, Poplarville.
Columbia Drug Store, Columbia.
Barry Drug Co., Columbia.
Dr. Harris, Mgr., Dr. Ratcliff Faraberry, dispenser, Barry Bros. Drug Store, Columbia.
Dr. G. H. Wells, Prop., Walker Bros. Drug Store, Columbia.
O. S. Mayfield, Prop., Collins' Drug Store, Collins.
Dr. Stovall, Prop., Stovall Drug Co., Collins.
Mr. Jones, Jones Beacham Restaurant, Collins.
Mr. Scott, Scott's Restaurant, Hattiesburg.
Mr. Hyde, M. W. Hyde Drug Co., Ellisville.
Dr. Ward, E. J. Ward's Pharmacy, Ellisville.
Sam Imbragnglie, Sam Imbragnglie, Ellisville.
Mr. Abbey, C. A. Abbey & Son, Ellisville.
City Drug Store, Laurel.
G. W. Nicholson, Hattiesburg Drug Co., Laurel.
W. S. Ames, Mgr., W. H. Hill, dispenser, Century Drug Store, Laurel.
Mr. Scruggs, Scruggs' drug store, Laurel.
Mr. Wallace, T. J. Wallace Drug Co., Laurel.
L. Banker, Mgr., Pastime Pool Room, Ellisville.

J. B. Waldrop, Mgr., C. W. Harper, C. V. Colley and Roy Ray, dispensers, Waldrop's Pharmacy, Meridian.

Mr. Renfroe, Prop., Renfroe Pharmacy, Meridian.

J. C. Ware, Ware & Kendall's Pharmacy, Meridian.

C. J. Woodruff, Prop., C. J. Woodruff Drug Co., Meridian.

Mr. McCorkle, Prop., McCorkle Drug Co., Meridian.

Mr. Heiss, Mgr., E. P. Simmons, dispenser, Paragon Pharmacy, Meridian.

Dr. Coleman, Coleman's Pharmacy, Meridian.

V. Knapp, Manager, Sugerman's Cigar Store, Meridian.

Manager, C. Camarinos, Sherman, Texas.

Mr. Plea, Palace of Sweets, Sherman. **[579]**

Mr. Noll, Prop., Carl R. Noll Drug Co., Sherman.

Mr. Stinson, Craycroft & Stinson, Sherman.

Manager, Langford & Keith's Drug Store, Sherman.

Mr. Watson, Watson's, Sherman.

Dr. Turner, Turner's Pharmacy, Sherman.

W. L. Bidding Drug Co., Sherman.

Manager, People's Pharmacy, Dennison.

Mr. Kingston, Kingston Drug Co., Dennison.

Dispenser, Frank Maniolos, Dennison.

Mr. Ramsey, Mgr., Reynolds Drug Co., Dennison.

Mr. Cross, Cross' Drug Co., Dennison.

Tony Giarraputo, Tony's Palm Garden, Dennison.

S. G. Davis, Prop., Tango, Van Alstyne.

Mr. Brown, Brown-Baker Drug Co., Van Alstyne.

J. J. Pitts, Prop., J. J. Pitts Soda-Fountain, Van Alstyne.

Oliver G. During, City Drug Store, Van Alstyne.

Mr. Hughes, Prop., Hughes Restaurant, Van Alstyne.

Messrs. Coffee, Props., Alcove Confectionery, McKinney.

C. Camarinos, Prop., Olympia Confectionery Store, McKinney.

Mr. Mitchell, Prop., Mitchell Drug Store, McKinney.

Major Smith, Smith's Drug Store, McKinney.

Dr. Hanner, Hanner Drug Co., Dennison.

C. H. Hughes, Dearmore & Hughes, Van Alstyne.

Mr. Schrodt, Prop., E. L. Day, Dispenser, Schrodt's Pharmacy, Dallas.

C. R. Smith, C. R. Smith's Pharmacy, Dallas.

L. E. Kerr, Mgr., Empire Drug Co., Dallas.

Mr. Nossett, B. W. Fuller, dispenser, Palace Drug Store, Dallas.

R. C. Coppedge, Prop., Oriental Drug Store, Dallas.

T. J. Britton, Prop., Jeff Britton, dispenser, T. J. Britton's Pharmacy, Dallas.

B. H. Anderson, Tyler Avenue Pharmacy, Dallas.

Mallory Drug Store, Dallas.

Lewis Davis, Prop., Davis Confectionery Store, Dallas.

Mr. Littlepage, Bishop Avenue Pharmacy, Dallas.

Harris and Clark, Props., Crystal Pharmacy, Dallas.

R. H. White, Mgr., Titche & Goettinger, Dallas.

I. C. Guy, Haskell Pharmacy, Dallas.

Marshall, Blain Marshall Drug Store, Dallas.

Manager, Washington Avenue Phar., Dallas.

Blackeney, Kirby & Blackney, Dallas.

Mrs. E. C. Flagg, Flagg Floral & Confectionery Store, Dallas.

B. C. Camp, Prop., North Dallas Drug Co., Dallas.

W. N. Craig, Fairmont Pharmacy, Dallas.

L. O. Donnelly, Mgr., Oak Cliff Pharmacy, Dallas.

B. B. Brown, Clk., W. H. Gould, dispenser, Gallett & Compton's Drug Store, Dallas.

F. L. Johnson, Mgr., Ernest Dowdy, dispenser, McKinney Avenue Drug store, Dallas.

T. H. Littlepage, Prop., Littlepage Pharmacy, Dallas.

W. B. Dougherty, Prop., Highland Park Pharmacy, Dallas.

J. A. Duncan, Magnolia Pharmacy, Dallas.

Dispenser, New York Ice Cream Parlor, Dallas.

Mr. Gilliland, Prop., Gilliland Pharmacy, Dallas.

W. T. Coble, Prop., Oak Lawn Market & Bakery, Dallas.

Mills, Mgr., Thomas' Confectionery Store, Dallas.

J. E. Blackwell, Mgr., S. H. Browning and C. A. Reeves, dispenser, Farrow-Linder Pharmacy, Dallas.

S. H. Althoff, Prop., H. D. Harding, dispenser, Owl Drug Store, Dallas. **[580]**

Mr and Mrs. Harper, Harper Confectionery Store, Grand Prairie.

Mr. Butcher, City Drug Store, Grand Prairie.

Johnson, Prop., Mr. Sykes, Mgr., Cooper Drug Store, Grand Prairie.

Harry Harris, Prop., R. C. Johnson, Dispenser, Harry Harris Drug Co., Cleburne.

M. S. Ball, Mgr., G. C. Dorris and W. R. Dalton, dispensers, Foster & Fain's Drug Store #2, Cleburne.

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C. F. Humphreys, Prop., J. M. Williams, dispenser, C. F. Humphreys, Cleburne.

E. J. Campsey, E. J. Campsey Drug Store, Cleburne.

W. B. Featherstone, Jr., A. C. Featherstone, E. C. Reeves and William Binder, dispensers #1, Foster & Fain's Drug Store, Cleburne.

F. B. Guard, dispenser, C. E. Mecham, Cleburne.

R. P. Cyrus, Cyrus & Cyrus, Cleburne.

Dr. C. R. Walker, Crow & Walker's Drug Store, Cleburne.

C. D. Williams, Palace Drug Store, Arlington.

Jim Rose, Corner Drug Store, Arlington.

At a number of places I also made consumers' tests,—that is to say, I instructed the dispenser on duty to ask each and every person who called at the fountain for either "koke" or "dope" if he meant "Coca-Cola," and I stationed myself in the vicinity of the fountain where I could hear the original calls by the customers, hear the questions of the dispensers, and the replies thereto made by the customers. The following tabulation shows the places where these customers' tests were made. At the fountain in these places, during the time specified, in my presence, every person using the word "koke" or "dope" in ordering was asked by the dispenser if he meant "Coca-Cola" and in each instance the answer was in the affirmative. In the following tabulation the first column gives the town, the second the name of the store, the third the time during which the test was made, the fourth the number of calls for "Coca-Cola," the fifth the number of calls for "koke," and the sixth the number of calls for "dope";

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		CC.	K.	D.	
New Orleans, La.	Capdau Drug Co., 8 A. M. to 1 P. M	113	3	8	
New Orleans, La.	W. L. Brown Co., all day	38	7	8	
New Orleans, La.	Peters Pharmacy, 9 A. M. to 7 P. M.	21		3	
Bay St. Louis, Miss.	Power Drug Store, all day	38		18	
Biloxi, Miss.	J. A. D'Aquin Drug Co., all day	19	6	28	
Gulf Port, Miss.	Parlor's Drug Store, 8:30–8 P. M.	35	1	101	
Columbia, Miss.	Barry Bros. Drug Store, 4:40 P. M. 9:30 P. M.	11		23	
Laurel, Miss.	Century Drug Store, 8:20 A. M. 12 M.	24		33	
Laurel, Miss.	Scruggs' Drug Store, 2 hrs.	11		9	
Meridian, Miss.	Waldrop's Pharmach, 8 A. M. 7:30 P. M.	105		215	
Sherman, Texas	Carl R. Noll	7	36		
Dennison, Texas	C. D. Kingston's Drug Store, 2:30 P. M. 8 P. M.	11	41		
Dallas, Texas	Oriental Drug Co., 10 A. M.—5 P. M.	9	47		
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Dallas, Texas	Palace Drug Store, 7 P. M.—10 P. M.	5	14		
Dallas, Texas	Palace Drug Store, 7 P. M.—10 P. M.	5	14		
Dallas, Texas	Schredt's Drug Store, 7:25 A. M. 8–30 P. M.	5	9	1	
Dallas, Texas	Britton's Phar., 8:45—11:15 A. M.	14	28	3	
Dallas, Texas	Thomas' Confectionery Store, 8:15 A. M. —12 M.	22	40		
Dallas, Texas	Olympia Confectionery Store, 1:15—5:50 P. M.	22	17		
Dallas, Texas	Farrow-Linder Phar. 7:10 to 10:25 P. M.	9	9		
Dallas, Texas	Owl Drug Store, 7:30 to 11:35 A. M.	9	28		

At the Yellow Pine Drug Store at Hattiesburg, Miss., I first called for a "koke," later in the day returned and called for "dope"; and, still later, returned and called for "Coca-Cola," and, in each instance, noted the container from which the syrup to make each drink was drawn. I observed the syrup to make all three of my drinks had been drawn from the same spigot. I then met Mr. Jones, the proprietor of that store, and inquired of him what he meant and what his customers meant when they called at the soda-fountain and asked for a

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"koke" or "dope"—because when I was in there I heard Mr. Jones say "dope." He said he meant "Coca-Cola" and that, in his opinion, the customers meant "Coca-Cola," and that's what he gave them at his soda-fountain whenever they called for "dope" or "koke." While at Hattiesburg I also called at the Corner Drug Store, but I didn't have an interview with the proprietor of that particular store at that time. I talked to him about something else and made no aprticular test there at that particular time. I was just in and out there all the time, I had other business with him.

Among other places I called on Peters Pharmacy, the corner of Baronne and Poydras Streets, New Orleans, and interviewed Mr. C. G. Peters, the proprietor of this store. I told him who I was and inquired of him what his opinion was when people called for "koke" or "dope," what they meant. Mr. Peters said they meant "Coca-Cola," that he had been handling "Coca-Cola" for eighteen or twenty years and that "dope" and "koke" had been nicknames for "Coca-Cola" long before any imitation product ever came on the market. **[582]** Among other places I also called at Osenwald and Gross Drug Store, on Canal Street, in New Orleans, and, after making a spigot test there as above-described, and after introducing myself and explaining my mission, I interviewed Mr. Savaghier, the manager, and inquired of him what he thought people meant when they called at his soda-fountain for "dope" or "koke"; and he informed me that they meant

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"Coca-Cola"; that "Coca-Cola" was the only thing they served in the way of a cola drink at that fountain. In my interview with F. S. Dean, at what was formerly the Kirby Five Cent Store, but which is now the Woolworth Company, having recently been purchased by the latter concern, he informed me, among other things, that "Coca-Cola" was the only thing in the nature of a soda drink that was sold by his Company. In my interview with P. O. Blane, proprietor of Blane's Restaurant, 641 St. Charles Street, New Orleans, I first called for "Coca-Cola" and later in the day called for "koke." When I called for the "Koke" Mr. Blane himself served me. When I said "Koke" Mr. Blane said, "Do you want a 'Coca-Cola'?" I told him that I did. I informed him who I was and asked what he thought people meant when they called at his place for "dope" and "koke" and he informed me that they meant "Coca-Cola" and that he had no use for the Koke Company and said if I had called for "dope" he wouldn't have paid any attention to me because he didn't know what I wanted and might have wanted morphine. In my interview with William Rappold, manager of the Philadelphia Ice Cream Company, 1034 Camp Street, New Orleans, he told me, among other things, that about a year ago he put "Koke" in his fountain and sold it for "Coca-Cola," not telling people any difference. He said it was not necessary to tell them for, as a general rule, they knew it and usually made a complaint and that it nearly ruined his trade before he knew it. At the

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Porter Pharmacy, opposite the L. & N. depot, at Biloxi, Miss., I happened to see a dispenser whom I knew, Joseph L. Brenners, and I went in and asked for a "Koke." Brenners looked up and said, "you better be careful how you talk around here, calling for 'Koke,' you are apt to get 'Koke'—just cut out that 'Koke' and say 'Coca-Cola' or the chances are you won't get 'Coca-Cola.'" [583] At Pascagoula Pool Room, at Pascagoula, Miss., I looked in the ice-box myself and saw that they had nothing in there but "Coca-Cola," which they served when "dope" was called for. In the consumers' test which I put on at Parlor's Store at Gulf Port, Miss., dispenser Baker had 63 calls for "dope," and 14 calls for "Coca-Cola," and one call for "service" and in each instance when "dope" and "service" were called for, Baker inquired what they meant by "dope" and "service" and the consumer said he meant "Coca-Cola." At the Day Drug Company, at Gulf Port, Miss., in my interview with Mr. Day, the proprietor of the store, he informed me that, among other things, about a year ago "Koke" was sold at his fountain and that it nearly ruined his trade. At Ellisville, Miss., I called at the Hyde Drug Company. I called there three times during the day, once for "Coca-Cola," once for "dope" and once for "Koke," and I noticed that in each instance the syrup was drawn from the same spigot to make each of the drinks. I later interviewed Mr. Hyde, who informed me that it was his understanding when people called for "dope" or "koke" that they meant

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"Coca-Cola" and that was what he gave them. At the Renfroe Pharmacy, at Meridian, Miss., in my interview with Mr. Renfroe, the proprietor, he acknowledged to me that he was not serving "Coca-Cola" at all, but that he was serving a substitute, and he told me he was handling "Koke" made by the Southern Koke Company, getting it from New Orleans, and he promised me that he would quit doing it. He told me he was glad that I caught him substituting; his conscience was hurting him a long time, and he was glad to quit it anyhow. On my visit to the W. L. Bitting Drug Company, at Sherman, Texas, I did not interview anyone at that store in regard to the meaning of the words "dope" and "koke." In my interview with Mr. C. D. Kingston, the proprietor of the Kingston Drug Company, Dennison, Texas, he informed me, among other things, that about a year ago a salesman from Greiner-Kelly Drug Company brought a man to his store and introduced him, that this man asked Mr. Kingston if he would have a drink and Mr. Kingston, thinking he meant a drink of whiskey, was going to accept the invitation, when the man took from his pocket a whiskey flask and poured out the syrup and made a drink and informed **[584]** Mr. Kingston that it was "Koke" made by the Koke Company of Dallas, Texas, and that his Company had trademarked that "Koke" and was going to sell it to every soda-fountain. Mr. Kingston stated he had been a "Coca-Cola" enthusiast ever since he had been in business and at once became indignant with

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the man. In the consumers' test made at the Oriental Drug Company, Dallas, Texas, I remained at this store from 10 A. M. to 5 P. M., during which time forty-seven persons called for "koke" and nine persons called for "Coca-Cola." Mr. Ernst Brown and R. S. Evans were dispensers. I heard the customers call at the soda-fountain for those drinks, and heard the questions which the dispensers put to them, and heard the responses of the customers to the dispensers' questions. In each and every instance the customers replied that they wanted "Coca-Cola."

In all, I visited 27 towns, and 192 establishments and I interviewed 192 proprietors, managers or dispensers. In the observation tests, when no questions were asked, I heard 128 calls for "koke," 115 calls for "dope" and 289 calls for "Coca-Cola." In my consumers' tests about which I have testified, I heard 290 calls for "koke," 430 calls for "dope" and 507 calls for "Coca-Cola." In each instance in these tests where the consumer asked for either "koke" or "dope" he was asked by the dispenser if he meant "Coca-Cola," and in each and every instance he replied that he did. You ask me to state what the fact is with reference to the comparative prevalence of calls for "Coca-Cola" under the name of "dope" West of the Mississippi and East of the Mississippi; and about 75 per cent of a hundred say "dope" East of the Mississippi, about one out of a hundred calls for "koke"; whereas, West of the Mississippi about eighty-five per cent of the consum-

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ers say "koke." In no instance where "Coca-Cola" was furnished in response to requests for "koke" or "dope" did any purchaser reject it as not what was wanted. As the result of my own observation, asking for "koke," "dope" and "Coca-Cola" myself, I have come to the conclusion that the words "Koke" and "dope," as applied to a soft drink means, "Coca-Cola." As a result of my interviews and consumers' tests, I have come to the same conclusion. You ask me to state whether or not the meaning I have given the words "koke" and "dope" applies among the trade and **[585]** with the public. Yes, sir, it means "Coca-Cola." I saw "Coca-Cola" extensively advertised in every town I visited. There was not a town where "Coca-Cola" was not advertised. The conspicuous thing about all this advertising was the trademark "Coca-Cola." I did not see any advertising of any product under the name "Koke" or "Dope" in any of the towns I visited. I have never seen "Koke" or "Dope" advertised anywhere, at any time, in any town.

Cross-examination by Mr. DART.

I first became connected with the Pinkerton National Detective Agency in 1911, when I was with that detective agency I was doing detective work, but since I have been with the Coca-Cola Company I have been doing any and all work that came to our office in connection with the Coca-Cola Company, and it was not all of it detective work, some of it was of the nature of detective work. The bulk of

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the work I have been doing recently has been making investigations. Prior to the last six months I had not been doing much of this kind of work. I had been looking after the advertising matter to see that the towns were well advertised for "Coca-Cola" and investigating "Coca-Cola" bottling plants controlled by the Coca-Cola Company throughout the United States and work of that kind. There are three men a-foot on the same investigation I am on for my company that I know of, that are known as investigators. These are Mr. S. Friend of Atlanta, Mr. T. L. Boswell, of New Orleans, and Mr. D. E. Bolton, of Atlanta. I have not met any others of the states, I have been going through representing my Company except those I have just mentioned, but, of course, every salesman connected with the Coca-Cola Company, and every man connected with the Coca-Cola Company, is on the lookout for just exactly what I am—always in the interest of the Company. I know there have been Pinkerton Detectives—that the Pinkerton Detective Agency has been employed to do work for the Coca-Cola Company, but just what work, I don't know, I wasn't in Atlanta at the time, the testimony was taken there, and didn't know that there were seven or eight detectives examined as witnesses in this case at that time. "XQ. 13. Let us put it this way: The Coca-Cola Company is just now **[586]** engaged in a determined effort to stamp out such rivals as the one we are now studying?" "A. It has been my understanding that they have always done this, they have

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always looked after the interests of their business in this like manner." No, sir; it is not a fact that they have been a little more vigilant and active in the last six or eight months; they are simply following their usual course now. Yes, sir; I was called on to do work of this character prior to six or eight months ago. You say you thought I said I hadn't been called upon to do any work; I said I had not been doing very much of this work during the last six months, you have got it backwards. No, sir; I did not say that I had been employed by the Coca-Cola Company for the last two years. I said in 1911, I went with the Pinkerton Agency—you didn't ask me how long I have been connected with this company. You say that if I want to explain when I went with this company I am at liberty to do so, and that you are waiting on me; I am not volunteering anything, I will answer your questions. You say that you are now giving me an opportunity to say when I went with the company and you ask me if I will say when I went with this company; I am not giving any information, I am answering your questions. You again ask me when I came with this Coca-Cola Company in my present capacity as it's employee; I have been doing this work for the Coca-Cola Company for about two years previous. No, sir; not under their pay as their employee. You ask if it was under any pay of theirs at all; yes. I had been doing this work for them while employed by the Pinkerton Detective Agency for about two years. I became an employee of the Coca-Cola

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Company in March of this year. I was detective up to March, 1914, in the employ of the Pinkerton people and have become a paid employee of these people since March, 1914. You say that, as this is the beginning of August, I haven't been very long with the Coca-Cola people, and you ask if I was taken off of exactly the same kind of work I was doing for them out in the field, in a certain competition and rivalry, and have been doing that kind of work ever since I have been employed by them; I have been doing work for the "Coca-Cola Company, but not of the same nature, as I stated before; I have been doing various investigating work. [**587**] No, sir, my entire work has not been what is called investigating, that is carried on by the Pinkerton people; since I have been with the Coca-Cola Company I have done work which I never did for them while with the Pinkerton Detective Agency. You say that since I won't give you an answer you will ask me squarely if it is true that I have done nothing for the Coca-Cola Company except to investigate, out of doors, questions of the nature that I am testifying about here, connected with rival concerns or connected with my own concern; I have been an out door investigator for the Company, but my work has not been confined to investigating rival concerns. Yes, sir, I said I had met three other men doing the same kind of work and they are employed by my company and are also ex-Pinkerton men. I don't know when they became associated with this company. It has been since the first of January of this year that I first knew they

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were associated with the company and employees in the same line. You ask if I found them in the employ of the company when I came in, or if they have come in since I took hold; I have run on to them since. When I was employed in March of this year my first duty for the company was to investigate a big drug company in Florida, who was substituting, and from that I have been doing along out of doors on that or similar work ever since, but also on other work that was not similar. I stayed in Florida about three weeks. I went from Florida to Atlanta, remaining in Atlanta for a few days and went to Hattiesburg, on the same operation,—that is, on the previous one, the one that took me to Florida first. I spent two or three weeks on that. Yes, sir, that was a substitution of some other soft drink for ours, "Coca-Cola." The Hattiesburg venture was partly on the same subject matter and partly to investigate a man who was substituting, and then to see after advertising matter and things of that kind for the company. I remained in Hattiesburg three weeks. That was part of the period I was covering in the testimony I gave yesterday. I was in the state of Mississippi a month or more—six weeks. I have spent time in Florida and Mississippi on the general work of investigating substitutors, but I have not spent any time in Georgia or Alabama on the same subject since I have been with the company direct. From Mississippi [588] I went to Louisiana, still engaged in the same kind of work, and from Louisiana I passed on to Texas. You say that you judged

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yesterday, during the fore part of the day, that most of the testimony I was giving was reading from written documents, and you ask if that's correct; they were my written statements in my own handwriting, memorandums that I made. "XQ. 57. I ask you again—the testimony you were giving in the fore part of yesterday was in fact being read by you from written papers of some kind which you had in your hand; is that not true?" "A. I had to refresh my memory." "XQ. 59. I assume you answer my question in the affirmative; yesterday you were reading from those written statements of yours when giving your testimony?" "A. Yes, sir, I read from them to refresh my memory. "XQ. 60. I notice time and again as you read that you uttered your testimony in the tone of a man who was reading—it's a fact you were reading sometimes as much as a page or two pages of that matter—is it true?" "A. I read all that was there." "XQ. 61. Now you say what you was reading from was memorandums made by you at the time; is that not actually untrue and is it not a fact that you were reading from reports you had sent in to your people—called reports, and that they were not memorandums in any sense of the word?" "A. They were my memorandums, that were sent in to the company and kept for me, I don't carry them around with me." "XQ. 62. You make a distinction between 'memorandum' and 'report'; I ask you again: Were you not reading yesterday from written reports which have been made by you to your company?'" "A. Yes, sir." "XQ. 63. Now

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I noticed later on in the course of the day that you came to a point where you were without reports and that you were unable to give any data of that at all; that's a fact, is it not?" "A. At Arlington, I had no report for Arlington, and, having called on so many places, it was impossible for me to remember the names of those people I called on at Arlington, and we passed it up for the time being." "XQ. 64. And this morning you have supplied the data." "A. Yes, sir." "XQ. 65. Also I noticed yesterday some places where you said you had sent in your written report, not knowing, I suppose, you would be called upon to testify so soon, and that, therefore, you had to pass them up; is [589] that true?" "A. That's true." "XQ. 66. So that, if you had to rely on your memory as to what you had heard and seen on this trip, unsupported by this contemporary reporting you had made, you would be in a very poor way, wouldn't you?" "A. I couldn't remember it, no, sir." You say you notice that these reports which I made were mostly in ink, but that some of them, though, were in pencil, and you ask if I wrote them when I interviewed the parties, or if they were written at some subsequent time, that evening or the next day; if a man told me a statement regarding the "Koke" salesman, I usually wrote that down—in fact I always did write that down then and there word for word as he told it to me; now the other part of the day's work I would write in the afternoon when I would finish my work. Just as soon as I got through my work I would write my reports for that

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day. No, sir, I do not mean to say that I always wrote down substantially what the man told me then and there in his presence, but sometimes I did. No, sir, I did not make my contemporary chronicles in the presence of the persons stating the facts, that's not always so, not in his presence. On the contrary, I carried away in my head the knowledge of what the man said and reduced it to writing subsequently. Yes, after having made memoranda of what a man said to me, I have read it back to him. You ask if I can name any out of the great number of people I called on to whom I read back the statement; yes, sir, Stinson, that's one, I can't recollect them all, there are too many. No, sir, Stinson is not the man who, according to my testimony, was so vigorous in denouncing the fraud of "Koke" and things of that kind; he isn't the man, I judge, you have reference to, but he was one of the men whose statement I read. He is one of the men from whom I read an elaborate statement condemnatory of "Koke." Yes, sir; I read his statement back to him. Yes, sir; that man to-day is perfectly cognizant of what I testified about and what I said he said to me. You ask if he is a partisan of the Coca-Cola Company; he is a friend of the Coca-Cola Company, he is no friend of the Koke Co. Every man that would make me a statement of a "Koke" salesman having called on him, before I did anything else, I wrote that man's statement down, but I did not always read it back to him. [590] You ask if I can think of any other person to whom I read back a statement; yes, sir; I can

think of Carl R. Noll. You say that's only two; well, that's enough. Out of the array of names I have given you I have only two men who actually saw me write their statement and have it read back to them to corroborate it. It's true of the remainder of the people that I wrote my memorandum out of their presence, if I made one at all, and then subsequently incorporated that statement in a report to my company. When I received a man's statement outside of the two gentlemen I have named, I made a note of it, then at some subsequent time later I incorporated the substance of that into a report to my company. I made the reports to the company every day, in the evening after the day's work was over. My first work for the Coca-Cola Company was to go out to detect substitutes. You say that whenever I found some man suffering from a case of inflamed conscience, or some man who thought he had been caught at it, or some man who felt that it was wise to play scared, of course, I wrote his statement down very quickly, and you ask if that's the kind of stuff I was searching for; no, sir, that's partly wrong; I don't deny that I was out to find and get confessions, If I could, I wanted to get all the people I could who were substituting, but when I caught a fellow substituting I didn't get statements from him always. You ask if I deny that, whenever I got somebody to confess, that I was glad and took it down and reported it; I assure you there is lots of people I caught substituting I didn't report at all. Yes, sir; I deny that when I caught a man and got him to confess I

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always wrote that down and pushed it on to headquarters. Lots of men told me they did substitute and I didn't report it. I mean to say I did not report those confessions. You say that whenever I got a man who confessed to substitution and professed his contrition, and denounced him who seduced him from the straight and narrow path, that I put down and reported it; well, not always; no, sir. There are still sinners out here in the business world whom I haven't reported to headquarters, and who have escaped paying, in my fashion, the penalty of their sins. You say you see from my testimony that, having started out to find substitutes, I found a [591] great many "Coca-Cola" friends; I found "Coca-Cola" in almost every drug-store I went to,—some I didn't find it. Yes, sir; I found "Coca-Cola" wherever I left a train pretty near; I found it literally spread abroad over the face of the earth. Most of the places I went to I found "Coca-Cola" sellers. I discovered on this trip that the "Coca-Cola" influence is very large and very wide and that "Coca-Cola" is everywhere. You ask if it's like Great Britain, as we studied in our school days, like the flag of Great Britain, that rises with the sun and is still floating on the housetops when the sun sets; Great Britain doesn't interest me—"Coca-Cola," does. However, I found "Coca-Cola" wherever I went. You ask if I found that the "Coca-Cola" influence was strong everywhere I went, and if I found its partisans and adherents; I found "Coca-Cola" most everywhere I went and most folks were friendly

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towards the product, "Coca-Cola," and willing to help out the detective or investigator. No honest man likes a substitutor. You ask if they were willing to help out the detective or investigator of the Coca-Cola Company as soon as he disclosed himself; most people are, most honest men are. You ask if they immediately fell in love with me as an honest man engaged in the same kind of work; most of them admired me for my honesty and for my courage in unearthing these rascals,—yes, sir, even though he had to do it by having to break and suffer, that's true. You ask if there was a single place where I went to that I didn't find "Coca-Cola" advertised in literature, and general information about "Coca-Cola"; no, sir, that isn't true; I found "Coca-Cola" advertised almost everywhere I went to, but there were some stores I went to where I didn't find it. However, in even those stores where I did not find "Coca-Cola" advertising I found such advertising outside of their stores in the same towns or in other stores. In most every town I found that every man who had a means of advertising had a space occupied by the advertising of "Coca-Cola." Yes, sir; looking out the window now I can see a "Coca-Cola" advertisement from here. I didn't find any literature, but I found advertising matter such as calenders and one thing and another. **[592]** Yes, sir, I found all these people to be great adherents of "Coca-Cola." Most every man who handles "Coca-Cola" is,—yes, sir; and is willing to help us run down anything that they look upon as a substitute. Yes, sir; I attribute

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that to the trademan's love of a square deal and honor, and hatred of the man who is substituting. You ask if it ever struck me that the average tradesman would a great deal rather see the other fellow shut out from carrying on anything that would take part of the trade away from him,—if I ever struck that kind of honor; I don't exactly understand you. "XQ. 131. You believe that the tradesmen whom you have referred to as loving you and your kind and hating the substitutor and his kind—you believe that,—they are adherents of "Coca-Cola" and helping you in this investigation, you have said,—you believe they are doing so on the principles of honor that actuate all men who love right; I ask you now, whether you ever heard that the average rival in business is always actuated by the desire to crowd his rivals out and to take his money and is certain that the other man would otherwise get—did you ever hear of that?" "A. I know the man who is using 'Coca-Cola' and has used it for any length of time becomes a friend to it, an honest product manufactured by an honest concern. And the man who has handled 'Koke' or a man who has not handled it but knows of it, doesn't consider—the average druggist doesn't consider 'Koke' an honest product and doesn't consider that it was manufactured by an honest concern—they look upon it as a substitute for 'Coca-Cola.'" "XQ. 132. You have been in the employ of the Coca-Cola Company four months, and within that time you have learned all this, I suppose; that it is honest, all people that buy from it are hon-

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est, that the other things are dishonest, and the others who bought from it are substituters and rascals; you have learned all that?" "A. I have been with the Coca-Cola Company several months and I have learned that 'Koke' is a substitute for 'Coca-Cola'." You ask where I became a "Coca-Cola" expert—where and how I was trained to the knowledge of "Coca-Cola" being what it is; I have been drinking "Coca-Cola" twenty years. You ask if I drank it then in the days when it was known as cocaine extract; no, sir; I haven't never drank it when it was known as a [593] cocaine extract. You say if I drank it twenty years ago it was the general information then; it was not my information. When I was nine years old I was smart enough to drink "Coca-Cola" and know I wasn't drinking it but getting something else if I wasn't getting it. I didn't know what "Coca-Cola" was but it was an honest product. No, sir; I haven't been drinking it ever since. You say that when I was twenty I knew it was an honest product and ask if that stuck in my mind ever since; when I was ten years old I knew that. You ask how I knew that the two hundred or three hundred people I visited who served me "Coca-Cola," as I thought it was—how I know it was "Coca-Cola," the genuine article, and if I knew it by the taste; I am a pretty good judge of "Coca-Cola," having drank it quite a while, and I can come as near telling "Coca-Cola" when I taste it as most any man; however, I can't always distinguish the difference. I have gotten drinks I couldn't tell whether it was "Coca-Cola" or

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not, it was served to me as "Coca-Cola," they told me it was "Coca-Cola." "XQ. 142. You followed, as I understand it, this course: You called on a man and called for 'Coca-Cola'; you went away and a little while later you came back and you called for 'koke'; a little while later you came back and you called for 'dope'; and, usually, when you got the three things you disclosed your identity and fraternized with the man; if he was a friendly man, if he was a 'Coca-Cola' adherent, you fraternized with him and got some information out of him; if he was one of the fellows you thought you caught hands down you got a confession or he begged off, that's about the way you carried on the business?" "A. No, sir, that's not the way, it's about the way, but not exactly." "XQ. 143. Have you anything to add to the answer to my question?" "A. No, sir, but I will answer your questions." Commencing with Florida where I first went and coming on to Mississippi, through Louisiana and Texas, I entered every first class store in each place I went to—a lot of joints that I didn't go into—but I would only call on the first-class places. You say that at Bay St. Louis, for instance, I did not mention the place of Montlezan; yes, sir; I called on him but I didn't mention his name—a good many **[594]** stores I called on in my investigation that I didn't mention yesterday, quite a number of them, but I did call on him and got an expression from him, too—got a good one. Yes, sir; I made a report on it to headquarters, but I didn't mention it yesterday. You say again to take New

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Orleans, that I didn't mention but four or five places there; I mentioned more than that, but I don't remember the exact number. No, sir; in none of the places I went into anywhere did I ask if they were carrying "Koke," the product of my rival here. Yes, sir; when I interviewed a man I talked about this rival or substitute "Koke," the product of the Southern Koke Co. No, sir; it is not a fact that I disclosed to every man whom I could get into touch with the fact that I was the investigator or representative of the Coca-Cola Company, and that I was out chasing down substitutes, and that I was out for the purpose of stopping this substitution whether by the merchants or the Koke Company—I did not say that to all of these people; I told everybody I could to call "Coca-Cola" by it's right name and to drop the nicknames. "XQ. 163. You deny, do you, that every man that you went to you would impress upon him the fact that the Coca-Cola Company was out for the purpose of catching these rascals who were indulging in these substitutions and who were selling their substitutes for "Coca-Cola"—you deny that?" "A. Every manager of a store that I called on, or every manager of a soda-fountain that I called on, I would talk to him about the product of 'Koke' along with 'Coca-Cola'; I asked him what he thought was meant when people called for 'Koke'." "XQ. 164. I come back to my question which you haven't answered; I say, do you deny that wherever you could possibly get hold of somebody in authority in any store you went into that you talked to them about the

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fact that you were investigating for the Coca-Cola Company this use of a substitute for 'Coca-Cola' and that you would communicate with them in such a shape that they understood that the Coca-Cola Company was out with its lawsuit, prosecuting these people and were going to prosecute anybody that they could possibly get any evidence against—didn't you tell them that?" "A. Whenever I would interview a merchant I would tell him who I was, that I was the representative of the Coca-Cola Company **[595]** and that a suit was pending between the Coca-Cola Company and the Koke Company and I wanted to know what he thought the people meant and what was his understanding when a man called at his fountain for 'Koke,' what he wanted and they said in every instance that they wanted 'Coca-Cola'." No, sir; I did not tell him that I wanted that evidence for this law suit, not particularly. You ask if I didn't state to them in such way that only an idiot could fail to understand that it was evidence I was searching for for that lawsuit; I don't know whether they were idiots or not, I don't think they were, I think they were all pretty smart business men. Yes, sir; I made it perfectly clear to them that I wanted their information. I made it plain to the majority of them that I would probably want to use their testimony, or rather use my testimony based on their statement. No, sir, I did not make it plain to them that the imitators or substitutors were not only being sued by the Coca-Cola Company, but that they were going to be prosecuted if there was any way to reach

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them criminally and civilly. No, sir; I did not make it plain to every man who was using "Koke" or who was dealing in "Koke" that it was going to be made a very expensive thing for anybody who handled "Koke" along side of "Coca-Cola." No, sir; I did not tell them it was purposed to settle the fate of this question in the court against anybody that handled "Koke"—I never used any language of that kind. You ask what I did say to those people about the prosecution, of those who were handling "Koke"; as a rule the merchant and myself would get in conversation about "Koke" and "Coca-Cola." We would talk about the prospect of the lawsuit and of this kind of matter and I would tell them that "Koke" was a substitute for "Coca-Cola" and we were going to endeavor to get them off the market—I said that. Yes, sir; get the Koke people off the market, and get the product off the market, also. No, I did not also tell them in the serious way I am looking right now, that it was a very serious thing, the substitution of "Koke"—"that thing has got a lot of people into trouble"—I didn't tell them that, may be they understood so, though. You ask if I did not make every man I came in contact with understand that they couldn't sell "Koke" or handle "Koke" as a rival of "Coca-Cola" or as a substitute [**596**] or in any other way I see fit to put it, without paying the penalty—courts, lawsuits and prosecution; no, sir, I didn't. Yes, sir; I deny that I went over those states and made it, in the interest of the Coca-Cola Company—that they had their investigators out and pro-

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posed to punish any and every man whom they found handling "Coca-Cola" by substituting or handling "Koke" against the nickname of "Coca-Cola"; lots of merchants I talked to I merely asked what they meant when a man called for a "dope" or "koke"; sometimes my conversation would end at that. "XQ. 178. Did you see in the course of your investigation any contracts made by the Coca-Cola Company with those people upon whom you were calling?" (Mr. Crane. "We object to that as being improper cross examination.)" "XQ. 179. Did you?" "A. I decline to answer that question." (Mr. ROGERS.—"Go ahead, Mr. Peace, you can answer it.") "A. I didn't see any 'Coca-Cola' contracts." "XQ. 180. Well, why did you decline to answer that question?" "A. Mr. Rogers spoke up and said 'decline to answer that' and I thought he was talking to me." "XQ. 181. You thought you had to obey his instructions?" "A. No, but I would do it." No, sir, it is not a fact that the bulk of these people I called on, and who are these ardent partisans, had contracts with the Coca-Cola Company in which they agreed to handle "Coca-Cola" exclusively and not to handle any other soft drinks at their place. "XQ. 185. Isn't it true, sir, that these people did have contracts to your knowledge with the Coca-Cola Company, whereby, in consideration of handling 'Coca-Cola,' they agreed not to handle any other similar cola drinks?"

(Mr. CRANE.—"We object to that question as wholly immaterial and irrelevant.")

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(Mr. DART.—"That's already gone down, unless you give him an opportunity to refuse to answer.")

(Mr. CRANE.—"I am not giving the witness an opportunity to refuse, I am merely availing myself of a legal right which I have, to make an objection to a question which I consider wholly irrelevant and immaterial.")

"XQ. 186. Will you answer my question?" "A. No, sir; I didn't see any contracts. "No, sir, I don't know that there were any such contracts. [597] No, sir, I was not instructed before I went out, the exact places or drug-stores that had contracts with the Coca-Cola Co. No, sir; I do not know from any source that they have a contract with the Coca-Cola Company whereby they agreed to handle "Coca-Cola" exclusively and not to handle any other similar soft drink. You ask if it is not true that, except for three or four names, or cases, during the course of this examination, that, in my march through the states of Alabama, Mississippi, and Texas, I found nothing but "Coca-Cola" fountains; nearly every place I called on handled "Coca-Cola," a great many of them did handle "Koke" and told me that they had and did. I called on 209 people in Mississippi, Louisiana and Texas. You ask me how many of these 209, I found that were handling "Koke," the product of the Southern Koke Company; I don't know because I wasn't out looking for people who were handling "Koke," I was simply out getting expressions from the merchants and their opinion of what people meant when they called for

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"Koke" or "dope." No, sir; I did not ask these people I talked to whether they handled the product of the Southern Koke Company called "Koke." So far as I know they knew nothing about it except what they told me, but I never asked them whether they handled it. You ask if I sought an opinion as to "Koke" and "dope" solely from the Coca-Cola people—people whom I found handling "Coca-Cola" and nothing else; no, sir; I called on merchants regardless of what they were handling; it didn't make any difference to me whether they were handling "Koke" or not. A great many of them I presume were handling "Koke," but were honest enough to tell me that when a man called for "Koke" he wanted "Coca-Cola" and not "Koke." You ask me if I can tell you how many people in the 290 people I called on actually handled "Koke," the product of the Southern Koke Company, to my knowledge; to my certain knowledge I couldn't say there was any. By confession I don't know exactly how many, but I knew there was at least sixteen to twenty. You say that I have given the names of those who confessed and whose confessions I saw fit to report, but that I have concealed the names of some who confessed, and did not report them, there were some men who stated they handled "Koke" that I didn't report. Including those whom I did not report there were some sixteen in all that told me they had handled [598] "Koke," and did handle "Koke," You say that, with the exception of those men who actually handled "Koke," my information

(Deposition of Frederick Conway Peace.)

as to what "Koke" meant was derived purely and solely from "Coca-Cola" sellers; no, sir; that isn't right, a great many men told me that at the time they sold "Koke" the consumer meant "Coca-Cola" because Koke was a cheaper product and they knew it was a substitute. Yes, sir; having gone over the length and breadth of Louisiana, Mississippi and Texas, I have reported the best that I could find on the subject matter—I have reported everything. That's all I was able to find in the course of my journeys over those three states. No, sir; I was not hampered for money, I went commissioned to spare no expense. You ask if I had an unlimited expense account; I sure had. And my testimony represents the sum of my achievement, one man anxious to please, and able to please, and willing to please, and I would have been delighted to find the subject matter for my employers. I was diligent in my work, didn't loaf on them, knew the point of view, and kept right up to it, and gave them the best in my shop, and what I have testified here is all I could find. I cannot say from my own convictions what is the extent of the power and influence in Atlanta, Ga. of the Coca-Cola Co. You ask what is the extent of the power and influence, as it is usually understood, of the Coca-Cola Company; in Atlanta, everybody is very friendly to it. You say that, therefore, it has both influence arising from the friendliness of the entire community and the power which results from such friendship; I don't know how much influence it has, but the people are very friendly to

(Deposition of Frederick Conway Peace.)

them over there. Yes, sir; the same thing is true all along the line; as a rule everybody is friendly to the Coca-Cola Company. You say that as a result of my perambulation over the three states I have produced the names of four people who actually, in the course of their weak lives, substituted "Koke" for "Coca-Cola"; that you would like for me to stir my memory and give you the names of all those in that great list I have made out who at any time in their lives sold "Koke," the product of the Southern Koke Company, as a substitute for "Coca-Cola"—you say I have said generally and vaguely that there might be fifteen or twenty people I found; and you ask if that is right; I will answer, yes, sir. Yes, sir; you correctly understood my testimony to mean that in these three [599] states in which I have journeyed I only actually found four people who actually handled, or would actually handle, "Koke," and only fifteen or twenty who had ever done so at any time in their lives, because I would be the last person in the world to whom they would tell it. You ask if that's the extent of the rivalry I found between the Coca-Cola Company and the Koke Company; I wasn't looking for substitutes this trip, altogether, I was looking out for merchants who handled soft drinks in order to get an expression from them and their opinion of what they meant and what the public meant by the words "dope" and "koke." I wasn't looking for substitution. You say that I raked most of those country towns with a fine tooth comb and that I got everything that was

(Deposition of Frederick Conway Peace.)

respectable or satisfactory above a certain grade; sometimes I went to all the places. In this town (Dallas) I went to all places and in Fort Worth, but in other towns I just went to the first-class places. I tried to get the cream of the entire soft drink trade; I tried to get them all, but I couldn't and so I went to the most respectable places. Yes, sir; East of the Mississippi River, about seventy-five per cent out of a hundred people say "dope," meaning "Coca-Cola" and probably one or two out of a hundred say "koke"; I seldom ever hear the word "koke" over there. When you cross the river and begin to go over in Texas you find that the situation is reversed. About seventy-five or eighty per cent call for "koke" and about one in a hundred calls for "dope." "XQ. 236. Now you have testified how you occasionally stood sometimes as much as a whole day, with a slight interruption, to see the procession of 'Coca-Cola' drinkers expressing their wants and you have stated that in each instance the dispenser would ask of the drinker. 'What do you mean?' and that the drinker would reply, 'I mean Coca-Cola' "; now purely because of the novelty of that question and answer, repeated and answered by hundreds and hundreds of people, I am driven to ask you whether that is all that actually occurred; each dispenser asked that formal question and each drinker gave that formal answer; is that true or is that just simply the language in which you have framed the question and answer at the various places"? "A. The dispensers, whenever a man would call for a 'dope' or

(Deposition of Frederick Conway Peace.)

a 'koke,' they would get from them an expression of what they meant; and the answer was 'Coca-Cola.'"

[600] "XQ. 237. You don't mean, as I understand you, to state that the formal question was put in each instance, "do you want 'Coca-Cola'"? or "do you mean 'Coca-Cola'" or "what do you mean"? "A. He asked the question in the same way." "XQ. 238. He did ask the question 'what do you mean?'" "A. Yes, sir," "XQ. 239. And the answer came, 'Coca-Cola,' you stick to that"? "A. 'Coca-Cola' was the answer, yes, sir." "XQ. 240. Now didn't it happen this way:—a man asked for 'dope,' the dispenser would say 'Coca-Cola'?—yes, sir; or nod his head; is that what generally occurred"? "A. That's the case in some instances, yes, sir." "XQ. 241.—And that pantomime or brief question and pantomime, you translated into the signifying of an opinion, is that right"? "A. That's virtually correct, yes, sir."

Deposition of H. G. McLean, for Plaintiff.

H. G. McLEAN.

Direct Examination by Mr. ROGERS.

I live in Dallas, Texas, where I have lived for the past four years. The first four months I lived here I was clerk in the American Exchange Bank. The next three I was a patient at St. Paul's Sanitarium and on March 10, 1911, I entered the service of the Dallas news in the advertising department as advertising solicitor. I can't recollect the exact dates, but something like twelve or fifteen months ago, I

(Deposition of H. G. McLean.)

called on the Koke Company of Texas to solicit an advertisement. I don't know where it was located, but between Pacific Avenue and some other street I think beyond; I went into the back way, that is to say Pacific Avenue entrance. I met Mr. Van Winkle and at that time it was my intention to solicit him for a card for the jobbers and manufacturers' trade and we discussed advertising for a few minutes and Mr. Van Winkle told me that the Koke Company of Texas was not doing any advertising. He said they couldn't afford to advertise from the fact that they were selling, I believe he said, "Koke"—I don't know if he mentioned the brand or not, it seems to me like it was "Koke," it may have been some other name—but that it was the same formula as "Coca-Cola" and said that the "Coca-Cola people were advertising and it was generally known as "Koke"; that is a large percentage of people would call for "coke," and if the fountains were supplied with "Koke" they could furnish him with this product and sell it or distribute it in that way. I believe that was [601] the main reason. I didn't have any argument to offset that, consequently I never called on him any more. I can't say definitely when this interview was had, but it seems it was twelve or fifteen months ago—it must have been a year ago. It was held in the Koke Company's office in Dallas, Texas.

Cross-examination by Mr. DART.

I believe I would know the gentleman if I were to see him. I think that's the gentleman right over

(Deposition of H. G. McLean.)

there (indicating Mr. Van Winkle). I think there are three brothers of the Van Winkle's—I know there are two, I knew one at the American Exchange Bank and I talked to this Mr. Van Winkle about his brother at the time I was in there, but I think the one at the American Exchange Bank is stouter—well, I think that's the Mr. Van Winkle that I met there (pointing to Mr. Van Winkle). There was nobody present but he and I at the time of this conversation—well, with this exception, the stenographer had gone in the next room I think, before I went in there. I waited for some time for a gentleman, who got up and left and I think a lady stenographer or a bookkeeper or something was in the adjoining room, but I talked to him in the back room—for there were two rooms there, as well as I remember, and I went in the rear because the machinery was in the room that I entered, at least there were some large tanks. No, I made no memorandum of the conversation at that time—I may have, but it wasn't a memorandum that would have been filed because at that time we weren't situated in our office, that is we weren't keeping records of conversations. You ask with whom I have talked the matter over since then; well, I know this much that the reason I can't give the date, quite a long time has elapsed and a short time ago I called on the Coca-Cola Company of Texas, on LaMar Street, and I met a gentleman whose name I don't remember, but I know he was manager of the Coca-Cola Co. I had never called on him before, with the possible

exception at one time, for a dollar and eighty cents New Year's card. They have a large list of these New Year cards every year in the news, but I was sent there to solicit some advertising for a special series of advertisements to run during the Manufacturers and Jobbers Home-made Products Exposition that was held in Dallas not long ago and he told me he wasn't [602] handling advertisements, that they were doing that from the Home Office and that he had given the Journal a card for this event and had no appropriation for that purpose, but that he was allowed, I think, to spend a small sum, just where they couldn't get to it in time. It never occurred to me that I was doing anything unethical or saying anything that might cause me to have to appear as a witness in the case or anything of that kind, and I just remarked that not long ago I met up with a proposition that was a puzzle to me and I related to them about the Coca-Cola people doing the advertising and I couldn't off-set that talk and I never dreamed that I would ever hear of it again—it was a funny incident to me and I thought they would take it as a joke and then it popped up that they had all this information. I didn't handle any of the advertising, but I think the Coca-Cola people do advertise some in our paper. Yes, sir; I have seen some advertising in the paper—not as much space however, as it seems to me in others. Yes, sir; I feel sure I have related the incident as it occurred—to the best of my memory. If there was anything else said, it wasn't of a nature that would

(Deposition of H. G. McLean.)

impress me. I have never forgotten that conversation because it seemed to me that it was about the first time that I didn't have a comeback. I don't remember having mentioned any other publications of his. No, I don't think Mr. Van Winkle told me that they couldn't afford to advertise in my paper with display advertising and I don't remember that he stated that they were educating the public and reaching the public by other outside avenues; but since you ask me if that was all, I remember something else in the conversation that I had with him, which I didn't relate to the "Coca-Cola" man. My detail of my conversation with Mr. Van Winkle may be a little bit loose and not together, but while I was there in talking of this drink he said something like this: "That this product we have is the same thing as 'Coca-Cola,' the formulas are identical, the man who is at the head of it originated the 'Coca-Cola' business in Atlanta, Ga." Then I think he told me, I think he went into detail and told me, first it was a $25,000 organization and then it failed and then later this proposition was taken over by some Eastern capital—I am not sure of that, but some one who was able to finance it and [603] that a "go" was made out of it, that it was a success. And I think that he said that the gentleman who started this Koke Company in St. Louis afterwards claimed that he didn't sell them the formula of this drink, but sold them the business' goodwill and that he was manufacturing the same thing and was within the law. Of course, naturally, I insisted that they

(Deposition of H. G. McLean.)

advertise "Koke" and put "Koke" out like "Coca-Cola" or whatever that product was; and in consequence of his refusal to give me any business or considered it, I went away, believing that the Coca-Cola people was making the demand, that they had a way of distributing "Koke" that would take care of their product and I am sincere in the belief that that was the impression he made on me. I believe that covers all of my conversation. You ask if in addition to this conversation that I had with the representative of the Coca-Cola Company I have seen some of the gentlemen engaged in this present litigation; I was informed that two gentlemen were looking for me and I came here—I hadn't seen them until I came to this office, that is to discuss it, or I hadn't been introduced to them. Yes, sir, this address was given me as the address of the two men who wanted to see me. They told me that they wanted to see me at General Crane's office. I didn't know they were holding court here and I came and asked them what they wanted to see me about. I was under the impression that that was it because I was told that Mr. Pierce and Mr. Rogers wanted to see me. It was then that I met them in this office and talked to General Crane. Yes, sir; I told them the same story. They told me they had been informed by the representative of the Coca-Cola Company that I called at their place of business for business and had made this remark and they wanted to know what I knew about it and I think I told them exactly what I have told just now.

Deposition of Cecil V. Rogers, for Plaintiff.

CECIL V. ROGERS.

Direct Examination by Mr. ROGERS.

I am a druggist located at Ervay, Liveoak and Elm Streets—what is known as the Junction building—in Dallas, Texas. I have been in the drug business about eighteen years, but I have been connected with the drug business for about 23 or 24 years, and during all of that [604] time there has always been soda-fountains in my store and in the stores where I worked. I was a soda-water boy for about 14 years. Very often I wait on the trade. When a man is out for lunch I very often drop behind the fountain myself. Yes, sir, I have dispensed at my soda-fountain myself and I have a dispenser at my fountain. You ask me to state whether or not "Coca-Cola" is a popular and frequently called-for beverage at soda-fountains; well, it is considered now one of the most popular drinks we serve; I serve daily, I would say, about five gallons of "Coca-Cola" syrup. I dispense ten to one of anything else, to the best of my knowledge. You ask me to state if I know the expession used by my customers at my soda-fountain, which I understand to be a request for the product of the Coca-Cola Company; well, they come in and call for it—I have had them come in and call for a "dope" or call for a "coke"—they very often, in fact more often, call for a "coke"; they will come in and say "give me a 'coke,'" just abbreviate it. By request for "give me a 'coke'" I understand them to mean "Coca-Cola" and "Coca-

(Deposition of Cecil V. Rogers.)

Cola" is what I furnish in response to such request. I have never had it rejected on the ground that it was not what was asked for. You ask how long I have known people to ask for "Coca-Cola" under the name of "coke"; I think it would be conservative if I said 15 or 16 years, during which period "Coca-Cola" has been supplied in response to requests for "coke." During that period it has never been rejected to my knowledge, as not being what was asked for. Yes, sir, I had a call from a salesman representing the Koke Company of Texas, I suppose it was from the Koke Company of Texas, it was "K-O-K-E." As near as possible I can't say exactly, I think it was in the last two or three years. The salesman wanted to put in "Koke" to be served at the fountain. While he didn't exactly make reference to the fact that it could be served for "Coca-Cola," he made mention of the fact that when people called for "coke" give them "Koke" and when they called for "coke" that they were more than likely to mean they wanted "Koke" than "Coca-Cola"; and mentioned the fact that if I didn't give them "Koke" and did give them "Coca-Cola" that I would be infringing on "Koke" inasmuch as they called for "Koke" and I gave them "Coca-Cola." [605] You ask if I have ever known the name "coke" to be used as a short name for "Coca-Cola" prior to this; oh, yes, it has always been called "coke" as far as I can remember. I have known of the product "Koke" of the Koke Company of Texas not over three years. I was a soda-water boy about 14 years ago at the Palace

(Deposition of Cecil V. Rogers.)

Pharmacy, at which time people very often used the nickname "coke" in asking for "Coca-Cola." I had a gallon of the product "Koke" of the Koke Company of Texas in my store at one time. Yes, sir, at one time there was an experiment made by the Koke Company's salesman. A customer was drinking at the fountain and there was a little experiment made there claiming that the two drinks "Coca-Cola" and "Koke" couldn't be distinguished from each other, that they were so similar. My soda boy there made the experiment at the request of the salesman of the Koke Co. This customer, who was sitting at the counter there says "I bet you I can tell the difference," he says "all right, we will have the boy mix them up and see" and took some out of his bottle and had the boy mix them and made a "Coca-Cola" too and while he turned his back the boy set them on the counter—the boy knew which was which—he set down the one he thought was "Koke" and picked up the one that tasted more like "Coca-Cola" to him so he said, and drank it, but he was right, however.

Cross-examination by Mr. DART.

Yes, sir; I have lived, and had that experience in Dallas. I have been here since about twelve years. No, sir, during that time I have never seen any other similar drink to "Coca-Cola," that was the only experience that I have ever had with any other drink similar to "Coca-Cola." Yes, sir; my establishment is well known as keeping "Coca-Cola," it has always enjoyed that reputation, and my customers are

(Deposition of Cecil V. Rogers.)

"Coca-Cola" customers. I have had them very often make the remark that they would walk two or three blocks out of the way because they knew they were going to get genuine "Coca-Cola." Of course, I cater to them to keep regular habitues of "Coca-Cola,"—to try to keep a regular trade as regular habitues of "Coca-Cola." And, with the single exception I have spoken of, I have never handled "Koke." [606]

Redirect Examination by Mr. ROGERS.

Yes, sir, I am familiar with the appearance of "Coca-Cola" barrels. The color of them is red, I suppose you would call that red. If I were walking down the street and saw in front of a store where there was a soda-fountain, a pile of red barrels and assuming that I was far enough off so that I could not see the labels, I would decide it was a "Coca-Cola" barrel. I am familiar with the color; I have handled quite a number in my time and I have always received it in red barrels and I have never seen it in any other colored barrel.

Recross-examination by Mr. DART.

Yes, sir; I have handled barrels. I have handled them to the extent of having placed them, broken the bungs and stood them on ends. I buy it in large quantities. It comes to me in forty and fifty-gallon barrels. You say that Mr. Rogers asked me something about the use of the word "dope," and asked if you understood me to say that the words "dope" and "coke" were used frequently; they have called for it under the name "dope," but that is not as

(Deposition of Cecil V. Rogers.)

frequently as "coke," though. "Coke" is the word they use more frequently than any other name I have known it to go under. Yes, I have talked to my customers about "Coca-Cola." You ask if I ever had any curiosity to find out what they believed was in it that made it so attractive to them; well, I have had a discussion, and discussed it lots of times, and they have wondered what it was that had the exhilarating effect, and why it was they thought it was always a drink that would relieve fatigue. I have had lots of people to come into my store, ladies and men, and take a "Coca-Cola" and claim that it was always relieving fatigue and tired feeling. Well, I can't say that that was originally due to the presence of cocaine in small quantities, I don't know that I ever saw an analysis in it that showed that. I don't know whether that was the general impression or not, but I have heard it said that they thought it contained traces of cocaine. If I get the use of cocaine right, it has an exhilarating effect. It does exhilarate your nerves,—it is just the opposite to morphine. I don't know, sometimes it makes them get a relief from trouble, but whiskey will do that too. [607] The first time I ever heard it called "dope" I asked them "what do you mean by 'give me a dope?'" They had some plumbers and electricians right near my store and one of them said "give me a dope." I said "what do you mean?" and he said "Coca-Cola," but I hadn't heard that under that name. I guess that was a little over two years ago. No, I didn't push the inquiry any fur-

(Deposition of Cecil V. Rogers.)

ther to know why they called it "dope." I have never talked to any of my customers as to why they called it "dope." I have never asked them that question. You ask if "dope" has not a rather sinister meaning to the average man; well, I have heard the word "dope" applied to numerous things, where they would say "you can get the proper dope on it," "how it was doped out to me," and dope is applied to drugs of different kinds where they are narcotic or exhilarant or what not.

Deposition of Jacob Schrodt, for Plaintiff.

JACOB SCHRODT.

Direct Examination by Mr. ROGERS.

I am a druggist located on Elm and Hardwood Streets, in Dallas, Texas. I have been in the drug business about 21 years and during all of that time, with the exception of about five years, I have operated a soda-fountain. Yes, sir; during that time I have been near enough to the fountain off and on continually to hear people ask for drinks and understand the names they use. I work at the fountain quite a good deal myself. I handle "Coca-Cola" and have handled it ever since it was manufactured —that is, as long as I was running a soda-fountain. Yes, sir; it is the most popular drink that we have at the fountain. You ask it when people at our store come in they invariably use the name "Coca-Cola," or if there are other words used to indicate what they want; sometimes they call for a "dope," sometimes some of them ask for "coke," some of

(Deposition of Jacob Schrodt.)

them for "a shot in the arm." Some of them, very few of them, say "Coca-Cola." When a man asks for "dope" or "coke" we usually repeat back to him; "Coca-Cola?" Ever since I have been in the drug business I have gotten in the habit, in fact I try to train all my help, that whenever a customer asks for anything in the store to repeat the name back to them as they understand it and if there is a mistake they catch it before it gets any further and I do the same thing at the soda-fountain. [608] If a man says "give me a dope," I have the boys say, "Coca-Cola?" When he says "give me a dope" or a "coke" we tell them we haven't got it because we don't serve anything else but "Coca-Cola" along that line. No, sir; in response to the question that I have just stated the dispensers ask the customers —those who ask for "dope" and "coke,"—I have never had them say that it was not "Coca-Cola" that was wanted. You ask how long I have known the word "coke" as a short name for "Coca-Cola"—oh, for years; I am not certain how many years it has been. The word "coke" has been used for "Coca-Cola" to say definitely it would be almost impossible; I have known it eighteen years, at least. At my fountain when a man comes in and asks for "dope" or "coke" I understand he means "Coca-Cola." No, sir; I have never had it rejected as not being what was asked for. I am glad to say we have had such a good trade on "Coca-Cola" we don't find it necessary to substitute anything else for it and don't substitute anything else.

(Deposition of Jacob Schrodt.)

Cross-examination by Mr. DART.

Yes, sir; I mean by that that I handle no other similar drink—nothing similar to "Coca-Cola"—and never have. My custom is built up as a "Coca-Cola" custom in that particular line, and of course, I try to keep it and they so understand that I am catering to the "Coca-Cola" taste and custom. You ask if the word "dope" is not a comparatively new word in regard to "Coca-Cola"; well, I can't say that it is with me. At least five or six or seven years ago, people called it "dope" because some of them had an idea that "Coca-Cola" contained stuff that would make them dopy and even to this day some of them think so—nevertheless, it has been proven that it doesn't. You ask if I endeavor, by calling back the word, to bring them down to the use of the word "Coca-Cola" as the proper word to use; my endeavor is to find out whether they really mean that or something else—a man might say "give me a dope" and he might mean Dr. Pepper, which I consider is a pretty good dope—that would be a good name for Dr. Pepper—dope,—and I want to make sure that I know what they want; that's my idea in training my help. [609] If a person comes in and asks for "King's New Discovery," I want everybody waiting on him to say "King's New Discovery?" because he is liable to be mistaken,—for instance, if he said "give me a bottle of castor oil "half the clerks would think he was asking for "castoria"—similar names, you know, and I have seen that same mistake made in other stores, so I think it is pretty

(Deposition of Jacob Schrodt.)

good training. No, as a result of my training my custom is not getting out of the habit of using the nickname and getting the regular name—that are just as bad as they have always been and if anything, worse, because they know that we know what they want. My regular customers that drink "Coca-Cola" all the time say, "give me a coke," where they mean "Coca-Cola"; well, I know what they want, and they know that I know it, too. Yes, sir; I think this Dr. Pepper drink is a good dope—it's dope, alright; if you are to ask me what I think Pepper contains, I can tell you. Yes, sir; Dr. Pepper is a soda fountain beverage and is a syrup like "Coca-Cola" and served at the fountain with carbonated water.

Redirect Examination by Mr. ROGERS.

Yes, sir; I have had purchasers come into my store and ask for "dope" that I was not acquainted with and have had my dispensers ask them what they meant. No, sir; they did not say anything other than "Coca-Cola." No, sir; I have never heard anybody ask for "Dr. Pepper" under the name of "dope." If a man who is a perfect stranger to me and who had never been in my store before, were to come in and ask for "coke" I would understand that he meant "Coca-Cola."

Recross-examination by Mr. DART.

You say that some of these people state that they thought there was dope in it and you ask if I mean dope like the Pepper stuff; well, it's entirely different from that; when I say dope in the vernacular of the druggist I mean anything that will produce a

(Deposition of Jacob Schrodt.)

habit, for instance whiskey might be a dope, coffee might be a dope, because it's a habit forming drink, and for that reason when they say dope they might mean something else,—anything that's dopy, we understand it to be, either substituted or added to. If the drink has been added to it has been doped; if I were to make an imitation of anything I would call it dope. [610] No, I don't say that I understood those people were calling for an imitation of "Coca-Cola," I just wanted to make sure what they wanted —if they called for "dope" I wanted to know what they meant or to make sure what they meant. Of course, I don't sell whiskey and things of that kind, and therefore don't know what nicknames they are in the habit of using. I know that drinks are served that are similar to "Coca-Cola" at other fountains— I have drunk some of them, but I have had no experience of my own knowledge to know what the run of customers call them. We don't buy anything that looks like "Coca-Cola" but "Coca-Cola."

Redirect Examination by Mr. ROGERS.

As a result of these inquiries and experiments when they ask for "dope" or "coke" at the soda-fountain they mean "Coca-Cola." No, sir; I don't consider that the name "dope" is a nickname for "Dr. Pepper," but it ought to be—I have no love for "Dr. Pepper," and that's the reason I brought that in; I was at one time accused of substituting on "Dr. Pepper"—had a lawsuit in this town, but I beat the case. I mentioned it first because I had that on my mind, because I can't get rid of that sore-

(Deposition of Jacob Schrodt.)

ness I had at the time, although I really beat the case —I never substituted anything.

Re-recross-examination by Mr. DART.

"Dope" not only means things of that kind, but things that have a tendency to dope you, or to stupify you, or exhilerate you, or anything else that is injurious such as cocaine—"give me a shot of cocaine"—they might mean that if they thought I was selling that so I want to make myself right. Yes, sir; "shot in the arm" is based on either cocaine or morphine, same proposition—that's a frequent expression, but they do it also jokingly and mean "Coca-Cola" in the long run, because if they didn't they wouldn't sit down at the soda-fountain. They certainly would be very much surprised if I were to draw out a needle and give them a shot in the arm. Yes, sir; they use that name interchangeably with cocaine.

Re-re-redirect Examination by Mr. ROGERS.

The people who drink "Coca-Cola" at my fountain are not drug addicts that I know of. **[611]**

Re-re-recross-examination by Mr. DART.

You ask if "Coca-Cola" is their long suit; I don't know about that; I don't advertise that I sell any dope—that is, in the way of morphine and cocaine. In fact, I don't sell it, and for that reason I don't have that class of people hanging around.

Deposition of Charles R. Smith, for Plaintiff.

CHARLES R. SMITH.

Direct Examination by Mr. CRANE.

I am a druggist and have been in the drug business for about 15 years, during which period I have been dealing in soft drinks, as well as ordinary drugs and have been handling "Coca-Cola" during all of that period, selling it at the soda-fountain. Yes, sir, I know by what names my customers have been calling for it. They have different names for it. A fellow will call it "coke," "dope," some fellows come in and say "give me a shot in the arm." Well, of course, when they ask for it by those names I would naturally think they wanted "Coca-Cola" and have always served them "Coca-Cola." No, sir, I have never made any inquiries as to what they wanted or had my dispensers asked them; I just served the "Coca-Cola." Recently there has been such a drink as "Koke" manufactured by the Koke Company of Texas. You ask how long since; well, I think that two or three years ago, probably. No, sir; I did not know of any drink manufactured and sold under the trade name of "Dope." Yes, sir; "Coca-Cola" was known to my customers and called for by them as "coke" and had been before I ever knew of the existence of any product known as "Koke" or "Dope." Yes, sir; I am doing business in Dallas now on Main Street. Yes, sir; within the last two or three years a salesman representing the Koke Company made an effort to sell me "Koke"

(Deposition of Charles R. Smith.)

—"K-O-K-E" instead of "Coca-Cola." At first they wanted me, you know, to take stock in the company and sell their "Koke" as they called it. Yes, sir; they would make me a price on the syrup, and then, after using so much of their product, I was to have so much stock in the Koke Company. And then they made the argument that they couldn't tell the difference between "Koke" and "Coca-Cola" and would make me a saving in using their product, "Koke"—it would cost less than "Coca-Cola." They said if people came in and asked for "Koke" just to give it to them. [612] Yes, sir; I was recognizing all this time that "Coca-Cola" was being called for as "coke."

Cross-examination by Mr. DART.

No, sir; I have not been in business for myself 15 years. I have only been in business for myself three years, all of which time was, however, in Dallas. Prior to that time my experience was in somebody else's employ as manager of a drug-store. You say you imagine that I have handled nothing but "Coca-Cola," and no rivals; I have sold it when I was manager for the Rogers Drug Store, but not since I have been in business for myself. Yes, sir; my store is recognized as a "Coca-Cola" store; I mean by that that I handle "Coca-Cola" to the exclusion of other similar drinks. Yes, sir; my custom has been built up as a "Coca-Cola" custom, and, of course, I cater to it with the idea of keeping it and, since I have been in business for myself, I have learned that there was a company handling "Koke" as an

(Deposition of Charles R. Smith.)
independent product. I think that has been on the market though, about three years, and I think maybe it was manufactured before they moved to Dallas, but it came to my personal knowledge only after they opened their office here. I know they have an office in Dallas and have had for about three years, but I declined to veer from "Coca-Cola" and never have handled that drink.

Deposition of J. W. Arrant, for Plaintiff.

J. W. ARRANT.

Direct Examination by General CRANE.

My brother and I have charge of the Southland drug-store soda-fountain in the Southland Hotel, Dallas, Texas. We have had this fountain about two years and three or four months. Altogether I have been a dispenser of soft drinks for a little over eight years, during which time I have dispensed "Coca-Cola." Yes, sir; I am familiar with the names which customers apply to "Coca-Cola" in asking for it. They call for it under the names of "coke," "dope," "shot"—mostly ask for "coke" when they come up to the fountain. When they do so I ask them what they mean and they say "Coca-Cola." When I first began dispensing soda water I did not ask them what they meant, but within the last few years I have been doing so. Something like a month ago I put on a dispenser's test at the request of a representative [613] of the Coca-Cola Company. That test continued something like a day and a half or two days. About ninety per cent of

(Deposition of J. W. Arrant.)

the people called for "coke." I would ask them, "What do you mean when you say 'coke'?" They would say, "Coca-Cola." Not one of them answered that question differently. No, sir; not one of them stated that he wanted the product manufactured by the Southern Koke Company, or any other Koke Company, known as "K-O-K-E." No, sir; I have never dispensed "Koke" in my life. No, sir; my regular customers in calling for "coke" didn't have any knowledge or information so far as I know, that I had ever dealt in "Koke." I had never dealt in "Koke" in my life, but I have been at fountains where they did sell it. Yes, sir; I have been at soda fountains where they did sell it—but I never did dispense it—I happened to be lucky. The Southland Hotel drug-store is the only soda-fountain in which I have worked in Dallas. Formerly, I worked in St. Louis.

Cross-examination by Mr. DART.

I said I had never worked in any place where they dispensed "Koke." I said I was lucky in not having run into those places. Yes, sir; I have always handled "Coca-Cola" and not handled any "Koke." Yes, sir; we have the reputation of being the largest dispensers of "Coca-Cola" in Dallas, and we handle large quantities of it. We make that a specialty, and, since we cater to it, we want that custom and we certainly do keep it. You ask if we have not a great many rivals who would like to get it away from us; why I don't know. Our customers, of course, are "Coca-Cola" customers—they come there because

(Deposition of J. W. Arrant.)

they know they can get "Coca-Cola" there. We have them come from all over Dallas—from Sanger's and all over the town. Yes, sir; these people I was asking the question of the other day thought I was putting up a joke on them; or they would ask "what are you trying to do?" and I said "There has been a drink made here in Dallas called "Koke" and they want to know if you want 'Koke' or 'Coca-Cola.'" They said "hell, no, we want 'Coca-Cola,'" and these are customers of ours from all over town—men that I knew. Yes, sir; we also carry signs advertising that we carry real "Coca-Cola"—to ask for "Coca-Cola" by it's right name. Yes, sir; we carry signs advertising that "we sell the **[614]** real 'Coca-Cola.'" Everybody in Dallas knows they can't get anything else but "Coca-Cola" from me. No soft drinks similar to that are carried; no cola drinks—what you call cola drinks.

Redirect Examination by General CRANE.

You say the General asked me the question "substitutes" and that you asked the question "rivals"; and you ask if I know that there are drinks on the market that call themselves rivals and don't call themselves substitutes; well, there's substitutes. That is, people like me who handle "Coca-Cola" call it substitutes, but I don't know what people out in the world call it.

Re-redirect Examination by General CRANE.

In order to relieve the difficulty I will state that some of the other drinks I carry are drinks such as orange phosphates, lemon, cherry, root-beer, grape-

(Deposition of J. W. Arrant.)

juice—Welch's, Armour's, and Red Wing, are leaders—lemonades and all flavors you might say that you could name.

Re-recross-examination by Mr. DART.

Those are none of them either rivals or substitutes for "Coca-Cola." They are not even rivals—that is to say, they have not the same taste nor the same color nor are they drunk for the same purpose. You ask if a man who drinks "Coca-Cola" steadily does so because of the exhilarating or joyous effect it has on him, and if he becomes a habitue; I couldn't say that drinking "Coca-Cola" causes them to become a fiend of it, anything like that. You say, to illustrate, that I don't find any men coming to my place steadily month in and month out, asking for limeade, for instance; yes, sir; we have "Coca-Cola" customers come two or three times a day and drink limeades and lemonades. They mix their drinks. On the other hand we have a steady line of customers who drink "Coca-Cola" steadily—more than any other kind of drinks. That's the custom of the drinking customers—drinking "Coca-Cola" but will occasionally take a limeade. As a rule my customers are "Coca-Cola" drinkers and are so recognized by me—they come there, get the good stuff, I serve it to them, and they come there daily. **[615]** I, as a caterer, know there is a very vivid distinction between anything like limeade and "Coca-Cola" and so do my customers.

Deposition of A. M. Timms, for Plaintiff.

A. M. TIMMS.

Direct Examination by Mr. ROGERS.

I am soda-man at the Owl Drug Store, Dallas, Texas. I have been a soda-water man something like ten or twelve years. Before I went to the Owl Drug Store I was across the street, at Smith's Pharmacy—worked for Moss a while and then went to the Owl Drug Store. I have not worked at any other places, in Dallas. Before that I worked in New Orleans quite a while for De Lopez, William's Pharmacy and Brinkley part of the time, and then worked in North Louisiana, as drug clerk and dispenser for C. Q. Perkins. My work has been back of the soda-fount, and drug clerk, too. I have charge of the soda-fountain where I now am. I occupied a similar position during my work as a druggist. Sure, we dispense "Coca-Cola." You ask if it is a popular drink—in demand; it is one of the most popular drinks. We have had people ask for it different ways, some ask for "coke" you know, some "Coca-Cola," some would ask for "dope," you know. When a man asks for "coke" or "dope" I understand that he means "Cola-Cola"; I generally ask him "Coca-Cola?" and he says, yes. I have been asking people that question ever since the last couple of weeks. A man asked me to put that test on and I have been doing so ever since. Before that I just gave them "Coca-Cola." I have never had "Coca-Cola" rejected as not what was

(Deposition of A. M. Timms.)

asked for. I have known the name "coke" to be used as a nickname for "Coca-Cola" ever since I have been working in the business. In other words, about ten or twelve years, something like that. They asked for "coke," "needle" and all like that, I didn't pay much attention to it. When a person uses these expressions I ask him and he says "Coca-Cola" every time. You ask if I understand that "coke" and "Coca-Cola" are equivalent and mean the same thing; well, when they ask for "coke" they always mean "Coca-Cola," that's what they mean.

Cross-examination by Mr. DART.

You ask if, when a man asks for "needle" I give him "Coca-Cola"; no, I say "Coca-Cola?" he says, "Yes." [616] I do that now in Dallas, but I never did in the small towns, because I knew everybody there and knew their habits. Over here I always ask them what they want. When they sit at the tables, of course, I don't get a chance. Lots of times boys sitting at the tables say three "cokes." Of course, I haven't got time to get there and change it. These pet names, "coke," and "dope," and all such names, all mean "Coca-Cola." Yes, sir; I have handled sarsaparilla and root beer—all syrups—lots of people drink "Coca-Cola" mixed with orange, some with lemon and like that. When they want to mix a drink they call for "Coca-Cola" and lime, "Coca-Cola" and orange, and so on. Yes, sir, they only call it "Coca-Cola" when they have a fit of absent-mindedness. They usually ask for it as "coke" or "dope." I always ask them and they say "Coca-

(Deposition of A. M. Timms.)

Cola" all the time. I don't handle anything else but "Coca-Cola." I don't handle anything of that class, any rival drinks, cola drinks.

Deposition of James F. Rogers, for Plaintiff.

JAMES F. ROGERS.

Direct Examination by General CRANE.

I am in the drug business at the Southland Hotel, in this city, where I have been for seven years. I have been connected with the drug business altogether about fifteen years, during which time I have been a dealer in "Coca-Cola" and have been dispensing it at soda-fountains. My observation has been during the fifteen years I have been in business, that "Coca-Cola" is called for under the names "coke," "dope" and "shot"—I believe those are the most frequent names—"coke" however, is the most frequently called for; it is called for by fifty per cent of our customers now; they call it "coke" meaning "Coca-Cola." Yes, sir, I feel that as a druggist I can tell pretty well a "dope fiend,"—one addicted to the use of opium, morphine or some other of its basis, when they come into my store. No, sir, when these people come to the soda-fountain they are not of that class; those who buy soft drinks from me are usually normal customers. You say that I have no suspicion when they call for "dope" or "coke" that they want any morphine or cocaine or preparations of any kind; we know just the opposite, we are sure that they want "Coca-Cola." [617] I believe fifty per cent of our customers call it

(Deposition of James F. Rogers.)

"coke." I have never had a case yet where they have ever rejected "Coca-Cola." Yes, sir, there are display advertisements of "Coca-Cola" in our establishment. No, sir, we have no display of advertisements of "Koke" in our establishment. There is nothing in our store to tell people that we are dealing in "Koke" and not "Coca-Cola."

Cross-examination by Mr. DART.

No, sir; I don't serve the drinks myself. I never have. I have always had somebody to serve them for me. I am a druggist and attend to the drug end of my business, look after the finances of the business. No, sir; I am not a practical druggist, I am a merchant druggist. Yes, sir; I have a knowledge of drugs, as drugs. I have a very thorough knowledge of the drug sundries department and a slight knowledge of chemicals or what they call the pharmaceuticals. I have never served behind the soda-fountain, I have never dispensed soda water. Yes, sir; Arrant, who was on the stand here, worked for me, and another man, I have two of them. Yes, sir; I have come in contact with the customers asking for "Coca-Cola" standing at the counter, not all day, but I am right close many times, standing close to the counter and at the cashier's department, which is several feet from the soda-fountain. What I hear is the accidental calls for drinks, I don't hear every drink called for, and I have besides a very busy establishment. Yes, sir; I know from the financial side that I have a very large "Coca-Cola" business.

(Deposition of James F. Rogers.)

In our fountains we specialize on that to a certain extent. Well, we don't consider it specializing exactly, but the enormous business makes us carry a large supply of it—we get it in barrel lots. We don't particularly cater to any particular drinks, but "Coca-Cola" has been our big sale. No, sir, we haven't carried any of the other rival cola drinks,—those who claim to be in the same field as "Coca-Cola"; we don't handle anything else, not since I have been directly interested in the business.

Deposition of R. L. Asbell, for Plaintiff.

R. L. ASBELL.

Direct Examination by Mr. ROGERS.

I am 26 years old; am a soda dispenser for Cecil Rogers [618] Drug Store here in Dallas. Before that I worked at Dimitri Ninich and before that at Britton's Drug Store. Before I came to Dallas, I worked in Atlanta at Brown & Allen's and Cone's. Brown & Allen's is a large store. At all of these various places I have worked back of the soda-fountain. Yes, sir; I came in contact with people asking for drinks at the soda-fountain and I know the names that they use to designate what they want. Yes, sir, I dispense "Coca-Cola" and always have since I have been in the business. Yes, it is a very popular beverage. At the various places that I have operated, people say, to indicate to me that they mean "Coca-Cola," they will ask for "dope" and some places they call it "coke." In Dallas the most common name is "coke." In response to a request

(Deposition of R. L. Asbell.)

for "coke" I furnish "Coca-Cola." I generally ask the question, does he want "Koke" or "Coca-Cola," he would smile and say he wanted "Coca-Cola." I have been asking that question the last five or six weeks. Before that I never asked such questions, but just furnished, in response to such requests, "Coca-Cola." No, sir; I have never had it rejected as not what was asked for. In Atlanta, my experience was that the name used over there was "dope." No, sir; I did not hear people in Atlanta ask for "coke." When a person asked for "dope" in Atlanta I understood he meant "Coca-Cola" and furnished "Coca-Cola." No, sir; I never had it rejected as not what was asked for. Yes, sir; I do regard the names "coke" and "dope" as commonly used nicknames for "Coca-Cola."

Cross-examination by Mr. DART.

You ask if they call it "dope" in Atlanta; well, I don't know, I noticed that all over, not only in Atlanta, but in Atlanta and all around—in fact, west of the Mississippi River. No, sir; I never did ask anybody why they call it "dope." You ask if I have any idea of my own why they call it "dope"; why, I have got an idea that they want "Coca-Cola," that's my idea, that's all I have, no other idea. No, sir; I have never analyzed the thing at all to find out why it was called "dope" at one place and "coke" at another. No, sir; I did not also say they called it "shot," I have heard that once or twice here, I have heard them ask for "a shot." No, sir; at [619]

(Deposition of R. L. Asbell.)

no time in my life did this renaming or nicknaming of this drink ever make me stop to think why they did it. It never gave me any occasion for reflection. I would figure it this way, you go in the saloon and ask for a bottle of Budweiser, you call for a bottle of "Bud," but if I ask for a bottle of beer a man would ask me what kind I wanted. With me, when they come in and ask for something I ask what they want. I am now at Cecil Roger's. Mr. Roger testified that he doesn't carry anything except "Coca-Cola."

Redirect Examination by Mr. ROGERS.

My purpose in starting about six weeks ago to asking people when they came in and asked for "coke" what they mean, was that I wanted to find out. No, I did not have any doubt about it. Yes, sir, I did it at the request of some one. In every case, when any one asked for "coke" and I asked the question "what do you mean?" the answer was, "Coca-Cola." I never had it refused or rejected. If they asked for "coke" I asked did they want "Coca-Cola" and they would smile and say, "yes."

Recross-examination by Mr. DART.

I said I started the inquiry at the suggestion of some one. I can't think of his name but he represents the Coca-Cola Co. You ask me to turn around here and see if I can see him; no, sir, it was somebody else. I can describe him, he was with this fellow here (pointing to Mr. Peace) the other fellow was a black-headed fellow, clean shaven. I don't

(Deposition of R. L. Asbell.)

know his name, but I know him when I see him. "XQ. 11. I would like for him to take a look at Mr. Friend and let him see if he was not the man." (Mr. Friend was thereupon brought into the room and after the witness had looked at him, counsel continued with the question.) "Yes, sir; it was he." Mr. Peace was with Mr. Friend and it was at his suggestion that I started to find out what people meant. That was about five weeks ago. I was in Atlanta, Christmas, two years. It is my home. Oh, no, that is not the first time I worked there, I worked in Atlanta two and a half years ago. [620]

Deposition of Dexter H. Hardin, for Plaintiff.

DEXTER H. HARDIN.

Direct Examination by General CRANE.

I am dispenser part of the time and part of the time front man in the Owl Drug Company, Dallas, Texas, located at Commercial and Ervay Streets. I have been in the employ of that concern since the first of February of this year. I have been in the employ of that and other drug-stores off and on about seven years. I have handled "Coca-Cola" for about the same length of time. Our customers call for "Coca-Cola" under the names "Coca-Cola," "dope," "coke," "shot." I first remember hearing them about four years ago. Yes, sir, I have recently made tests or had tests made of what our customers mean by the names "coke" or "dope," for which they called at our fountain. A test was made between two and three weeks ago at the request of Mr.

(Deposition of Dexter H. Hardin.)

Peace. The result of that test was that about a third of the customers called for it under the name of "coke." Whenever they called for "coke" or "dope" I asked if they wanted "Coca-Cola" or "Koke" and the reply was "Coca-Cola." No, sir; there was no instance in which they did not want "Coca-Cola" but wanted "Koke." That test continued for about two hours. I think there were about a hundred people come in during that time and about thirty-five of them called for "coke." Yes, sir; I asked each of those thirty-five what he meant by "coke" and his answer was "Coca-Cola." During the period before that test was made, I estimate that about a third of our customers called for "Coca-Cola" as "coke"—in the past few years, I would say. Since I have been with the Owl Drug Company I would say that about thirty-five per cent of them call for "Coca-Cola" by the name of "coke."

Cross-examination by Mr. DART.

When I first had a man to ask for "dope" I didn't know what he wanted and the same with "coke" and the same with "shot." I had to ask them what they meant. I did not know what they meant.

Deposition of S. Y. Athoff, for Plaintiff.

S. Y. ATHOFF.

Direct Examination by Mr. ROGERS. [621]

I am thirty years old and am manager of the Owl Drug Store, corner of Commerce and Ervay Streets, Dallas, Texas. I have been in the drug business for thirteen years, during all of which time I have oper-

(Deposition of S. Y. Athoff.)

ated a soda-fountain. I am not concerned with the dispensing of soda water personally, but my duties are all over the store and I see and hear everything that goes on. Yes, sir; we dispense "Coca-Cola" at our fountain and have done so all the time I have been in business. Yes, sir; it is a popular drink, in demand, and has been extensively advertised. Yes, sir; I know how purchasers of "Coca-Cola" indicate that they want "Coca-Cola." The name "Coca-Cola" is not invariably used; it is quite frequently shortened into "coke" or other words used, such as "dope" or "shot." When a man comes into our store and asks for either "coke" or "dope" or "shot" I understand that he means "Coca-Cola." Yes, sir; these terms are familiarly used nicknames for "Coca-Cola." In response to requests for "dope," "coke" or "shot" we give "Coca-Cola." We have never had it rejected as not being what was asked for. I have heard the words "coke" and "dope" since I have been in Dallas, that is, about six years. During all of that period a request for "coke" has been understood by me to mean "Coca-Cola."

Cross-examination by Mr. DART.

The same applies to the use of the word "dope." You ask if I have ever thought of what the word "dope" means in regard to that; well, the word "dope" may mean to some people a narcotic or sedative or drug, but I don't think it has any connection with the drink. I have inquired, in a limited way, of many people whom I know just in a friendly sort

(Deposition of S. Y. Athoff.)

of way, when they come and ask for "dope" or "coke" I tell them we don't keep that, we keep "Coca-Cola"—that's merely in jest but they mean "Coca-Cola." I have never gone into their minds to find out how or why they call it "dope" but we generally know it is a nickname for "Coca-Cola." Yes, sir; they might as well call it "Choka-Choka." We have had people ask for it as "rope" too. There are a variety of names used to indicate the drink. [622] Yes, sir, I am a druggist and, of course, I know what "dope" means as a druggist. "Dope" would mean a pharmaceutical drug, a habit-forming drug, such as morphine, cocaine, heroin. "Shot" is used—supposed to be a shot of cocaine or morphine in the arm. Yes, sir, I have heard these people call "Coca-Cola" "a shot" for short. I have been here in Dallas about seven years. I came from Philadelphia and was also a druggist up there. I first heard these names I speak about in Dallas; we don't use very much "Coca-Cola" up there in Philadelphia, not as much of it as we do here. You say you suppose I didn't know what they were talking about when I got the first request for "coke" or "dope"; I never got the first request, because I was not working behind the fountain. No, sir; I can't fix the time when I first heard those expressions, but it was in the last five or six or seven years. I can't say definitely just when I did commence to hear those nicknames. When I got the first nickname I had to inquire what it meant because I wasn't familiar with the amount of "Coca-Cola" sold down here—the

(Deposition of S. Y. Athoff.)

amount that was drunk—nor was I familiar with the terms. We are not selling any drink of the same nature as "Coca-Cola" at the Owl Drug Co. We handle "Coca-Cola" exclusively, with the exception of lemon-cola, which is an entirely different drink. Yes, sir; our customers are "Coca-Cola" customers. They come to us because they know we sell it. It is our boast, our brag, that we dispense pure "Coca-Cola" and nothing but pure "Coca-Cola." No, sir, we do not also boast or brag that we dispense the only pure "Coca-Cola" in town. Lemon-cola is colored similar to "Coca-Cola." I am sorry, but I can't tell you where it is put up. I don't know where it comes from. Yes, sir; we sell that in our fountain—I don't know about selling it—we have a bottle of it now but it is very, very rare that it is called for. I have never tasted it myself and don't know how it differs, if at all, from "Coca-Cola."

Redirect Examination by Mr. ROGERS.

You say that I was asked a moment ago about the meaning of the word "dope" as a druggist and then you ask what I understand the word to mean as a soda dispenser; if I were at the soda-fountain I would understand the word to mean "Coca-Cola."

[623]

Deposition of O. M. Brown, for Plaintiff.

O. M. BROWN.

Direct Examination by General CRANE.

I am drug clerk and have charge of the soda-fountain at the Owl Drug Store in the Oriental Hotel,

(Deposition of O. M. Brown.)

Dallas, Texas. With the exception of one year, I have been there nine years. In dispensing "Coca-Cola" it has been called for during the period I have been selling it by those who use it under the names "coke" and "dope," "shot in the arm" and "Coca-Cola." I have been observing the name "coke" applied to it ever since I began noticing it, say five or six years ago. About three weeks ago at the request of the "Coca-Cola" representative, Mr. Peace, I put on a test at the Oriental Drug Store, of our customers coming in. "Q. 14. Well, now, what proportion of these people that called for 'coke' during the time that test continued wanted 'Coca-Cola' —that called for 'coke'?" "A. Well, half of them, anyway." Yes, sir; I would ask them what they meant and their answer would be "Coca-Cola." That test continued all the afternoon until I went off duty. No, sir; we have never handled "Koke" at the Oriental Drug Store. Yes, sir; a representative of the Koke Company sought to have our people handle it. He said it was cheaper and said there was no difference in it and "Coca-Cola," but I tasted it and told him that there was a difference and I believe any one could detect the difference. I couldn't tell you exactly when those statements were made, it was some time ago. It has been at least three years ago.

Cross-examination by Mr. DART.

No, sir; we don't handle any other rival drink of "Coca-Cola"—that is any drink of the same general kind.

Deposition of T. Q. Martin, for Plaintiff.

T. Q. MARTIN.

Direct Examination by Mr. ROGERS.

I am a druggist and am proprietor of the Owl Drug Store, Dallas, Texas, in which I operate a soda-fountain. I have operated a soda-fountain for two years. That is as long as I have been in the store, but the store itself has been there for six years. Yes, sir; I recollect a salesman of the Koke Company, of Dallas, calling on me. His name was Green. He came and asked me to sell "Koke" [624] and said it was just as good as "Coca-Cola," from the fact that it was being manufactured at Dallas, and, as a patriotic citizen, I should sell it, and that I wouldn't be deceiving the customers because a man should get what he called for,—if he called for "Koke" that we should have the "Koke" to give him. Well, I differed with him, I told him that people called for "coke"—called it as a nickname for "Coca-Cola,"—and I told him that was a nickname that people generally applied to "Coca-Cola," that I had myself observed "Coca-Cola" around the fountains, that they would say, "give me a glass of 'coke.'" No, sir; I did not purchase any of this "Koke" syrup from Mr. Green. You ask if anything was said by him that his product was anything like "Coca-Cola"; yes, sir, my impression is he said it was the same thing, as the man who originated the formula, had at one time worked for the Coca-Cola people.

Deposition of E. B. Thomas, for Plaintiff.

E. B. THOMAS.

Direct Examination by General CRANE.

I am in the confectionery business, doing business under the name of Dallas Confectionery, located at 1508 Elm, and 1605 North Main Streets, Dallas, Texas. I have been in the confectionery business in Dallas, Texas, five years in January. I was in the same business for thirteen months in Bonham, Texas, and before that when I was a boy I was in the same business in a small town. Yes, sir, I have handled "Coca-Cola" while I was in the confectionery business, but I don't remember whether I handled it during all of the period of time that I have been engaged in that business. When I was quite small, I had a fountain in my father's grocery store and I don't believe the first year I handled "Coca-Cola," but I think I bought some the second year. I have handled and dispensed "Coca-Cola" over the fountain about eight years. During this period my customers had been calling at the fountain for "Coca-Cola" under at least somewhere in the neighborhood of a dozen names, I should judge. They called for "dope" and called for "coke" and they called for "dry-town eye-opener" and they called for a "shot"—things like that. **[625]** Yes, sir, they called for "Coca-Cola," also. They called for it as "coke" frequently, as much as they did "Coca-Cola," if not more. I couldn't say as to how long they had been calling for it as "coke," it seems to

(Deposition of E. B. Thomas.)

me it has been as far back nearly as I can remember —a good little bit, nicknaming it "koke,"—seems like the same way as going into a saloon and saying "give me a bottle of Bud"; as far back as I can remember they would say "give me a bottle of Bud" for Budweiser. The people to whom I offered "Coca-Cola" when they called for it as "koke" have never rejected it to my knowledge. You ask if I handle "Koke"; I think they sent me some two or three times in a gallon jug, that's the largest quantity I ever got at one time, was in a gallon jug. Some time ago, but not recently, a representative of the Koke Company tried to induce us to use the "Koke." My best recollection is that it has been over a year, maybe a year and a half ago. The argument he used was that I could make more money out of it than I could "Coca-Cola." Yes, sir, sell it to me cheaper, make me a better proposition. You ask if they said anything about its resemblance to "Coca-Cola"—being similar or the same as it; to my best recollection, yes; they said it was practically the same thing as "Coca-Cola." You ask if they made any threats against me unless I sold "Koke"; the best I remember on that, they said that when they called for "Koke" that they were going to make us give them "Koke," and if they called for "Coca-Cola" give them "Coca-Cola." That's my best recollection of it. I think the gentleman I was talking to is this gentleman here (pointing to Mr. Boyd)—I couldn't say as to whether or not he was connected with the Company in an official way. My

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recollection is he was manager, but whether he said that or not I won't say, that's the idea I have now—that he was connected with the company; whether or not he was manager or president, I wouldn't say. You ask if they told me anything about being able to sell this "Koke" as "Coca-Cola," and if it was discussed as to whether my customers would be able to tell the difference between "Coca-Cola" and "Koke"; my best recollection on that is that the argument put up was that we had more calls [626] for "Koke" than we did "Coca-Cola," or something to that effect, and we could sell them as easy as to dispense the other when they called for "coke." You tell me not to answer your question until I grasp what you mean, and you ask if anything was said as to whether or not my customers would be able to tell the difference; well, I don't know exactly on that, but my best recollection on that is that there would be no one that would make any kick on it at all, if they called for "coke" and we gave them "Koke,"—there would be no kick on it, that it was a first-class article, and that I could sell it as good as I could "Coca-Cola."

Cross-examination by Mr. DART.

I couldn't say whether this man I pointed to is named Boyd or Brown. I remember his face. He visited me in a business way trying to get me to carry the syrup of the Koke Company—I suppose that was what he was there for. Yes, sir; he told me that "Koke" was an article which had its own name properly protected and he told me when I

(Deposition of E. B. Thomas.)

served "Coca-Cola" on calls for "Koke" I was doing wrong and that I ought to serve his goods when they called for it. I believe he did say that he could make me do it in law, I won't be certain about it, because I have had other people say that he did say that to me—whether my talking to someone else gave me that idea, or whether he said it, I don't remember. You ask who I talked to about it; well, different business men. You ask if this man Peace of the Coca-Cola Company had said anything to me about it recently; I don't know, I don't remember the name, there has been several "Coca-Cola" men in my place; I can tell them by the faces but I forget the name. Yes, sir; I know this gentleman (pointing out Mr. Peace), he called on me lately. No, sir; he was not one of the ones that told me the story—I don't think I have talked any about that in the last year. They found out about a year and a half ago that I didn't handle their goods and they haven't bothered me in the last year and a half. Oh, yes; Mr. Peace talked this matter over with me. I don't remember now as to what he said. He asked me about different people calling for "coke" and "Coca-Cola," what per cent of them called for "coke" and **[627]** what per cent called for "Coca-Cola" and what per cent of those who called for "coke" wanted "Coca-Cola." I don't know as I told him all of what I have been telling you, but I told him part of it. No, sir; he did not take down what I told him and read it back to me, not that I remember of. He asked some of my dispensers

(Deposition of E. B. Thomas.)

if, when a customer came in and asked for "coke," they believed in their mind that they wanted "Coca-Cola" and after he got what the dispenser said he came over and read the name of each one and asked me was that correct—the name and what they said; that's the only thing I remember him taking down and reading. Yes, I did talk to him about these people coming to me and trying to get me to take "Koke" and sell "Koke"; he asked me something like what I have said. That was either the first of last month or the last of the month before. I told him something like what I have just told you, or less. I believe I have told more under the cross-examination than I did in that first talk to him; I am not sure about that, possibly he was in my store at different times and something was said about this each time he was in. I told him these people were in and tried to get me to carry "Koke." I don't know that I told him what you have already gone over with me— that they had the name, had it registered and that it was our duty not to sell—I don't know that I told him that like I told it to General Crane. I told General Crane that in his office just now when I was talking to him. Yes, sir; I was talking to one of these gentlemen in the other office just now, but I did not tell them that then, they didn't ask me that question then; no, sir, neither one of them asked me about that then. You ask if I ever, as a matter of fact, sold "Koke"; I think at one time they sent me down a gallon of "Koke." I put it in the pump, I believe I told the dispensers

(Deposition of E. B. Thomas.)

to try it—a few of them that asked for "Koke" were given it and one of the dispeners came to me a few days later—I don't know how many days it was, and said to me "you can't get by with that stuff, Mr. Thomas." I said, "take it out of the pump." No, sir; the people don't want it. With that exception I have never handled "Koke," but I have handled "Coca-Cola" steadily and have been in business in Dallas five years. **[628]** No, sir, I am not a druggist, I have got confectionery and candies and carry pastry and soda-water drinks. No, sir, I carry no other drinks of the kind of "Coca-Cola" other than "Coca-Cola."

Deposition of T. C. Lupton, for Plaintiff.

T. C. LUPTON.

Direct Examination by General CRANE.

I am manager of the Coca-Cola Bottling Works in Dallas, Texas, which position I have held for four or five years the fourth of next month. Yes, sir, as manager of the Coca-Cola Bottling Works we sell a bottled product known as "Coca-Cola," which is manufactured by the Coca-Cola Bottling Company—they do the bottling—it is manufactured by the Coca-Cola Company. We get orders for it by mail and by long distance at times, but principally it is supposed to be by mail as people don't care to pay a long distance call. In the city of Dallas the wagons deliver it. We have solicitors to go around and sell it on the wagons and we have telephones and we have our salesmen in town. I am familiar

(Deposition of T. C. Lupton.)

with the bundle of orders addressed to the Coca-Cola Bottling Company of Dallas, Texas, which is now exhibited to me and those orders are signed by people who were making orders. In all of them the commodity ordered by my customers here is denominated "coke." I have examined that bundle of papers and I have seen them before. They are orders by the different people whose names are signed. These people were customers of ours at the date when the respective orders were made. They had been customers since we started in business, about fifteen years ago. We have never sold them any commodity other than "Coca-Cola." They called the commodity which they were ordering "coke." The "Coca-Cola" that we sold them and delivered to them was not labeled "Koke" but was labeled "Coca-Cola." No, sir, nothing else than "Coca-Cola" and the crowns on the bottles were labeled "Coca-Cola" and nothing else. This stuff was received at my office, the Coca-Cola Bottling Works; yes, sir, I received them myself personally. I read every order that comes into my place of business. **[629]** These are papers that came through my office in Dallas and were received by me in Dallas. I am manager, I am a stockholder and I am employed there. When these customers ordered "coke" they got "Coca-Cola." There were not any objections made by any of them. I identify that bundle of orders as the ones that came to me through the United States mail to my office in Dallas, Texas, that is, the office of the Coca-Cola Bottling

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Company. You ask if I had kept them in the meantime; we have filed them away, General, we file all of our orders away in a file. We filed these every month approximately. Yes, sir; we had other orders before we got these similarly addressed—we destroyed them. Our files get so full we destroy them every year, we don't keep them more than a couple of years. The orders that were prior to these in date were destroyed, I think they were burned up. We had our files full and there was no use for them, they were in the way blocking our office after they were filed. We don't feel there is any use filling our office with boxes of files lying up there a long time. (General Crane here gave these orders to the examiner and asked him to put his memorandum on the bundle and fasten them together so they could not be questioned hereafter.) You ask if we bottle any fluids other than "Coca-Cola"; yes, sir; we bottle four or five different kinds of soda-water and have been doing so for four or five years. Yes, sir; we were bottling other characters of fluid in addition to "Coca-Cola" at the date when these orders were received, but we did not fill any of the orders which have been exhibited to me for "coke" with any fluid we were bottling except "Coca-Cola." No, sir; we have never bottled the commodity that they know as "Koke,"—never in my life, never. I have never sold it in my life, never. These customers never have asked us for "coke" except as in these orders. These orders mean "Coca-Cola." No, sir; none of our customers ever asked us for "Koke," never.

(Deposition of T. C. Lupton.)

They have never asked us for "Koke" that was manufactured by the Koke Company, unless those orders called for that. These were the only orders on that subject. I interpreted these as calling for "Coca-Cola."

Cross-examination by Mr. DART. **[630]**

I said my occupation is manager of the Coca-Cola Bottling Company, Dallas, Texas. No, it is not incorporated in Dallas, but in Chattanooga, Tenn. No, sir; it is not connected with the Chattanooga Bottling Works, but we are incorporated in the State of Tennessee. Yes, sir; there is a Coca-Cola Bottling Works in Chattanooga. No, sir; that concern is not handled by a man of the same name nor is it handled by my brother. There is no Lupton that I know in Tennessee in the "Coca-Cola" business. J. T. Lupton is the president of the Coca-Cola Bottling Company from Georgia, down, but not in Tennessee. He hasn't got a thing to do with the Coca-Cola Bottling Company in the State of Tennessee. He is my uncle. I have been manager of the Coca-Cola Bottling Company in Dallas since, I think, 1904. I was in Houston at one time and have been in the business about ten or eleven years. It will be five years that I have been in the "Coca-Cola" business in Dallas, this coming March. Yes, sir; I have been in charge of this bottling plant in Dallas, since 1910. You ask me to turn over that bundle of exhibits in my hand and to tell you the earliest date of any of the orders in that bundle of exhibits. The first I can find is dated September 7, 1912, and the latest is June 21,

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1914. I would have to go through and figure up what the quantity of material covered by that bundle of exhibits is,—it's so many cases. I don't carry them in my head. I would have to go through it and figure out and see. We have a tabulation on our books of the quantity of stuff which is covered by the documents I have in my hand, but I couldn't carry it in my head. No, sir, I have never tabulated it for the purpose of this investigation, not a particle. No, I don't know off hand what quantity of "Coca-Cola" is covered by the exhibit in my hand, I haven't figured up the number of cases. Yes, sir; I can do it and I will do it. Yes, sir; I understand that what you want is an itemized statement or tabulation showing the date of these orders, the quantities ordered and the names and addresses of the persons ordering them. Yes, sir; we keep a record in our office of the quantity of "Coca-Cola" that we sell, most emphatically. I most emphatically will, at the same time I make the tabulation **[631]** above mentioned, give you a memorandum showing by dates the quantity of "Coca-Cola" which we have sold beginning at the period of that first letter down to and including the date of the last letter. Yes, sir; I understand what you want. Yes, sir; I know our customers sufficiently well to be able to say that the bundle of papers in my hand are genuine orders from genuine customers. I looked over that bundle of papers yesterday. No, I didn't—I only looked over them as we filed them away. I haven't looked at them since they were filed away. Yes,

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sir; I know some of the people personally who gave us the orders. I don't know them all, but I think I know the biggest majority of them. No, sir, they are not all in Dallas. Yes, sir, some of them were scattered over various parts of Texas. No, sir, those are not all of the orders we received. This is the "coke" orders. You ask if these are all the orders I have received from 1912 to the present date in which the people have called for "coke" meaning "Coca-Cola"; well, if I was to go through all my files I would venture to say this is not all of them. I didn't produce them all because it would have taken time and I didn't think it was necessary to produce all of them. You ask if it was I who thought it was unnecessary or if it was somebody else who thought so; I don't know, somebody else didn't say anything about that to me so far as that goes. You ask how I came to hunt up that particular part of them; well, Mr. Rogers came down and asked me if I had any orders and I said "I will go through my files and see if there are any orders"; and this is a few that I found. No, sir; I personally did not go through our files to see what we had—I watched it going through. Somebody else did it for me but my bookkeeper and I was right there by him. I wouldn't say that the bookkeeper turned over every one of the files of 1913 and 1914. Yes, sir; I was right there and watched him going through the file just like I watched these orders when they came in, I opened them and his instructions were to go right down through the file and we were searching

(Deposition of T. C. Lupton.)

for the information these exhibits were to furnish us—that is to say we were searching for the orders given by our customers for "coke." **[632]** You ask why we made an incomplete search and why we did not make a full search; I was under the impression that this lot of orders right here would be enough to make any man that had any common sense understand that they meant "Coca-Cola" when they ordered "coke" from the Coca-Cola Bottling Works. I thought that was enough to accomplish the whole thing that was necessary. You ask if it is not a fact that my bookkeeper and I did go through all of our files; exactly, we went through some files. You ask again if we went through all of our files; I got an automobile down here and you can go down with me and go through them. You ask again if we went through all of our files; no, sir, I think not. You ask how many we left behind; well, possibly eight or ten files. I never count the files; I couldn't hardly tell you how many thousands of orders those eight or ten files would cover. Yes, sir; we have produced all the orders with reference to "coke" which we found in the course of our investigation; that is right. If we have any more, I haven't produced them and haven't seen them recently. You ask if I know that there are any more; well, I wouldn't take a dying oath that we have some more, but I believe we have. In any event, as far as I saw orders of that kind I have produced them. The orders which I have in my lap amount to one-twelfth of all the orders sold by us in the period covered by

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these orders. You say you want me to verify that for you by giving you the figures you asked for a while ago, and you further say that in that connection you want to impress on me what you want; namely, that you want me to certify for you the entire output of my bottling works for the period covered from the earliest date of one of these orders down to the oldest date of the last of the orders and you ask if it is clear to my mind what you want; now, Judge, that is a question that is hard for me. There is but one way I could get it and that is to go over the number of cases that these orders call for. I think that would be the only safe and satisfactory way to get the straight of it. Yes, sir; I understand that I am testifying under oath in a case involving property and money and that it is a serious business; and I further understand that no man ought to go on the **[633]** witness-stand in a tone of merriment or laughter and make guesses. Yes, we put up "Brew" but I couldn't tell you whether there is an order for "Brew" in this bundle of orders which I hold in my hand. No, sir, we have not been bottling it all the time since I have been in Dallas; we bottled "Iron Brew" last year. I am not a chemist, Judge, I can't tell you what it is. No, sir; it is not a "Coca-Cola" product. Yes, sir, we did put it up in "Coca-Cola" bottles, but I don't do it now, not "Iron Brew." However, we did last year; yes, sir. The "Brew" that was called "Brew" before "Iron Brew" was put up year before last. You ask if we put that out in "Coca-Cola" bottles also;

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we put it out in soda water bottles. No, sir, we did not put it out in "Coca-Cola" bottles, but in soda water bottles. Now, Judge, it could be that soda water got into a "Coca-Cola" bottle; of course, that is pretty hard to say, but we are bottling soda water in soda water bottles and "Coca-Cola" in "Coca-Cola" bottles. You ask if it would be an accident if you were to show me a bottle out of my own works containing "Brew"; well, Judge, nearly everybody has used my bottles, I couldn't tell you, I couldn't determine. Yes, sir, when you get a bottle from my works it is my bottle. No, it wouldn't be an accident at all, if you got a bottle from my works containing "Brew." You say you understand me to say that last year I put up "Iron Brew" in "Coca-Cola" bottles; we put up some, yes. No, sir; it is not equally true that a year before last and the year before that we put up plain "Brew" in "Coca-Cola" bottles; we put up black soda water, what we call black soda water. No, sir; I don't deny it was "Brew," we sold it as black soda water. Now the man sold it, he might have sold it as "Brew," but I sold it as black soda water. It is a little darker than "Coca-Cola." "Iron Brew" is about the color of "Coca-Cola." No, sir, we never bottled sarsaparilla in our lives. Yes, sir; "Iron Brew" had the word "Brew" on the cap on the bottles. Yes, sir; it had the simple word "Brew," no "Iron" about it at all. No, sir, there was not a thing on the bottle to indicate that it was "Iron Brew." You ask if, on the contrary, it was not in a "Coca-Cola" [634]

(Deposition of T. C. Lupton.)

bottle, it was in a soda water bottle. I said some of them were accidentally filled in a "Coca-Cola" bottle. You say that when we used "Iron Brew" we put them up in "Coca-Cola" bottles; some of it, Judge, we did, and when we got out of "Iron Brew" we took up plain "Brew." Yes, sir, that's right, the top, the cap, is marked "Brew" and it is in a bottle identified by our name blown into it, that is the kind of bottle we send it out in. You ask if that is the same kind of "Coca-Cola" bottle that has the design "Coca-Cola" blown on the shoulder; no, it has no trademark on the bottle. It is just a plain bottle with just two little c's on the bottom with probably Coca-Cola Bottling Works, under the trademark on it. You ask if it is not otherwise the "Coca-Cola" bottle in size, color, shape, and design; no, sir, it isn't the shape and not exactly the size or color. No, they are not as nearly alike as two bottles can be that are made out of the same mould, I believe it is different. Well, Judge, not to make it extravagant, I would venture to say that we have two hundred shipping customers who order "Coca-Cola" by mail. No, I do not mean to say that all of these are the kind of men who give us these sort of orders, I just mean regular shipments. When I say shipping customers I mean out of town men, men who send us written orders from out of town. I just gave you a small estimate of the number of them, it is likely to be more than that. You ask me to add to that memorandum you have already asked me for, a statement made up from our books,

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giving the total number of our shipping customers right through that same period, whether two hundred or five hundred—you say you don't want the names but just the total number of men we serve with "Coca-Cola" under shipping orders; all right, sir, I will do it. You ask if you understood me to say that we mixed our own syrup; our soda water, yes, sir, but we don't mix any "Coca-Cola," it comes in barrels from the Coca-Cola Company of Dallas, Texas. Yes, sir; that is made right here in Dallas, but we don't make it. You ask who makes it in Dallas; Mr. Dan Candler is the manager of the Coca-Cola Company of Dallas and he has a place here where he makes it. **[635]**

Redirect Examination by General CRANE.

In mentioning our shipping customers I did not include in that number those who ordered it from us exclusively by 'phone, I just included all the orders. In mentioning my shipping customers I did not include any customers other than those whose written orders I filed, nothing but the written orders. Yes, sir; we have about twenty-five customers to whom we ship on telephone orders without written orders. You ask if those customers who order "Coca-Cola" from us by telephone call it anything else than "Coca-Cola"; they call up and say "boys, my wagon is coming in; put me twenty cases of 'coke' on the wagon." Just before I left, Mr. Battie, at Grant Prairie, called me up and told me "my wagon is coming in, put me thirty or forty cases of 'coke' on the wagon." We do not keep any record

(Deposition of T. C. Lupton.)

of the telephone orders for "coke"; we put it down on the record "Coca-Cola." Any orders of that character wouldn't disclose what our customers called for. When they asked for "coke" we let them have "Coca-Cola." We know it is "Coca-Cola" they want. Yes, sir; our regular customers from a distance,—that is, outside of Dallas County,—order "Coca-Cola" by telephone. They do not always call it "Coca-Cola," they sometimes call it "coke." I can go over the books and tell you, General, in a few minutes how much "Coca-Cola" we sell on long distance telephone orders, and I will do that and file the statement here. You exhibit to me a bottle with a "Koke" label and "Koke" crown on it and ask me to examine it and see if we put up that bottle; no, sir, we didn't. It says on the bottle "Coca-Cola Bottling Works, Dallas, Texas." Yes, sir; those are the works of which I am the manager. The label on the bottle reads "bottled under authority of the Koke Company of Texas, Dallas, Texas, W. McCarthy Moore, Pt. "Trade-Koke-Mark registered, August 21, '06, No. 55878, U. S. Patent Office." You ask me to read, too, what is on the crown; well, that is hard to read, it's got nothing on them that you can really read, General.

(Mr. CRANE.—Well, the crown is defaced.)

(Plaintiff here tendered and offered in evidence the bottle in question as an exhibit in this cause.)

[636]

(The introduction of said bottle was objected to by the defendants on the ground that it had not been identified or brought home to the defendants.)

(Deposition of T. C. Lupton.)

Yes, sir; that is the Coca-Cola Bottling Company's bottle. That is one of our soda-water bottles. No, sir; I have not a "Coca-Cola" bottle convenient. Yes, sir; I have seen that bottle or one like it before with the Koke Company's label and crown on it. I have bought it from several places, General. I have bought it off the Green Bottling Works' wagon, and a little stand across Commerce Street Bridge, I can't recollect the name. Yes, sir; I mean to say that I have bought bottles of that size and shape more than once—my own bottles with that fluid in it and labels on it of the Koke Company in the city of Dallas. Those purchases were made in the last two weeks. No, sir; I did not bottle any of the fluid in these bottles so purchased and none of them was filled under my authority. No, sir; I did not know what was on the inside of the bottles and I did not open them to ascertain; just bought them and set them aside. The color of that syrup is very similar to the syrup in the other bottles, which I likewise bought. It is very hard to tell the difference between that and "Coca-Cola" as to color. The coloring matter is very much the same. You now exhibit me another bottle and ask whether or not I have ever seen this bottle before; well, General, I have sent so many bottles up, now that particular bottle—there has been so many in my place I have got a little house full of them there now. I sent one of these bottles, which is similar to this to Mr. Rogers. (Mr. CRANE.—We will put that into the record with the statement that this is the bottle that we got from him.)

(Deposition of T. C. Lupton.)

Recross-examination by Mr. DART.

No, sir; I did not say that I have got a whole house full, but a rack full of them. You say there is a good, big difference between a house full and a rack full; I have seen a small house, a bird house that it would not take so many to fill. No, I was not referring to bird house when I said a house. You caution me that I am under oath and say you can't understand humor or [637] levity when sworn statements are made; well, Judge, we do have lots of them; I have never counted them but we have lots of them, and my men are out to-day buying them as fast as they can get their hands on them. It looks like everybody is using my bottles, putting different labels on them—it's annoying to me. I have got men out and I want to show them that they are using my bottles and I don't believe it is right for them to do it. No, sir; I have not had men out a long time for bottles, no, sir; I told these men to buy every bottle that they could of mine and that some day I might possibly want to prosecute somebody for using a "Coca-Cola" bottle, my property. I just want to show them, you know, that they are using my bottles. I just told my driver to buy up my bottles with somebody else's goods. I didn't tell them what line to buy, even if it had lemon soda in my bottle, bottled by somebody else. We have had men out buying up bottles of this character, which I say contain "Koke," for three or four weeks. I didn't specify in there, Judge, "Koke," I just said "boys, if you find any of my bottles

(Deposition of T. C. Lupton.)

buy them up, if anything comes up I can take it to Court and show they are using my bottles,"—that was my theory in buying up those bottles. Well, I would say that we have been searching for bottles of the character of plaintiff's exhibit #153 for a month. No, I have not been searching for that name. I have never as a matter of fact had a search made for my bottles filled with "Koke." You ask if I meant what I said a while ago when I said that I had accumulated a house full of bottles filled with "Koke"; I said with different brands, Judge, not of "Koke." No, sir; I cannot tell you how many bottles I have succeeded in getting nor how many bottles we got filled with "Koke." Yes, sir; I am able to identify that bottle there marked Plaintiff's Exhibit #153. Now, Judge, as far as having it in my hands is concerned, I can't say, but I can say—this house, it's in my house, where I was working. Yes, sir; that bottle was in the house where I am manager, that is my bottling works. Yes, sir; there is something on the bottle to indicate that (the witness here pointed to the words "C-C" on the bottom of the bottle.) **[638]** You ask if I blew that in as a means of identifying this bottle or if I mean to say that at one time in its history this bottle came out of my bottling works because it has the letters "C-C" blown in it; Judge, we had all these made on that description—"C-C"—"Coca-Cola" bottles. You ask if I think that is an intelligent answer to the question, and you again ask if there is anything on the bottle to indicate that I ever saw it be-

(Deposition of T. C. Lupton.)
fore in its present condition full of a liquid which I say is "Koke"; no, sir; not a thing. As far as me having it in my hand is concerned, I cannot identify it; no, sir. I haven't any idea who put that label on that bottle. Judge, I have no idea of what is in the bottle. Judge, I have no idea of what was on the crown, originally. All I know is that it is a bottle that belongs to the category of bottles manufactured for our bottling works, that is it, Judge, just it exactly. Yes, sir; I said a while back that there were occasional "Coca-Cola" bottles that had "Brew" in them. You ask if the bottle which you hold in your hand, Plaintiff's Exhibit #153, is a "Coca-Cola" bottle; no, sir; that is a soda-water bottle. "Re-XQ. 35. Then what you meant was—when you answered my previous question about 'Brew' being in 'Coca-Cola' bottles—you meant in a bottle which contained the trademark blown on the shoulder of the bottle." "A. That is right, Judge." You say that nobody would mistake the bottle which you hold in your hand for a "Coca-Cola" bottle; well, Judge, some people, you know, could be mistaken in it, it's the size of the "Coca-Cola" bottle but it hasn't the trademark. No, sir; the bottle which you hold in your hand is not a "Coca-Cola" bottle, except for the fact that the word "Coca-Cola" is not blown on the shoulder. No, sir; it is not like a "Coca-Cola" bottle. You ask how it differs from a "Coca-Cola" bottle,—well, Judge, it is a little bit taller, it is built a little bit different from "Coca-Cola" bottles. You ask me then how it is that I say

(Deposition of T. C. Lupton.)

people would mistake this Exhibit #153 for a "Coca-Cola" bottle; well, they hold the same, Judge, they hold the same amount. "Re-XQ. 45. I ask you why you swear that bottle #153 not being a "Coca-Cola" bottle could ever be mistaken for a "Coca-Cola" bottle, why do you swear that?" **[639]** "A. Well, Judge, they could be mistaken, according to my judgment because the 'C-C's' on it, they would take that for a 'Coca-Cola' bottle—could do it, couldn't they?" You ask who would; I say anybody drinking it, it is about the shape of the "Coca-Cola" bottle. I believe, Judge, that anybody looking at that bottle #153 would be liable to take it for a "Coca-Cola" bottle. "Re-XQ. 49. In other words, it would take an expert like you—" "A. No." "Re-XQ. 50. To pick out a 'Coca-Cola' bottle from one of the soda-water bottles—" "A. Yes, it is hard, Judge, it is hard, no doubt about that." "Re-XQ. 51. About as hard a task as sorting out black-eyed peas, one from another?" "A. I didn't say black-eyed peas, but it is a hard job." "Re-XQ. 52. Now, a while back you told me that when you had quit using 'Coca-Cola' bottles for 'Brew' and started putting it in soda-water bottles occasionally 'Brew' would get into 'Coca-Cola' bottles but it was an accident; that's fair, you told me that?" "A. Yes, sir." "Re-XQ. 53. Well, what you say about another bottler getting his stuff into your bottles by accident—that couldn't happen, could it?" "A. Yes, it could." No, sir; we have not an exchange place where we exchange bottles. No, sir; I am not

(Deposition of T. C. Lupton.)
the boss of the whole business. We charge forty cents as a deposit on a case and when they bring them back they get it back; we just charge that for safety. You ask why I am so zealously hunting up people who are selling my bottles filled with their stuff and you ask if I own the bottles after I sell them to my customers; it's like this, you know, judge, you can go to any place, glass-house anywhere and buy two dozen bottles to the case for forty cents, this is merely a safety for our bottles, we don't sell them but we know that forty cents deposit will return our bottles to the house, it isn't really selling the bottles —I would be glad all day long to buy bottles for forty cents at two dozen in a case; yes, siree. You say you are only interested in this question because I said very vigorously that I had ordered my men to find out to-day these men using my bottles and indicated that I was going to prosecute them; I said they ought to be prosecuted. You ask if I think they stole my bottles; no, I didn't say it was stealing, Judge, I didn't say it was stealing. **[640]** No, I never have hunted up anybody to find out how "Koke" got into a soda-water bottle of this kind; I never set up an investigation to find out. No, sir; I personally didn't by this particular bottle, nor did I personally buy any of the bottles, nor do I know where they come from except in so far as I believe my drivers. Yes, sir; I claim that is right; namely, that when I testified where these bottles came from I was merely testifying to what somebody else told me; I claim that is right. You say that your friend, General

(Deposition of T. C. Lupton.)

Cane, here, got me to say that I have a large quantity of telephone orders; that is right. When I am there, Judge, I do answer the telephone myself. Well, I would say I am there about seven hours a day. You ask if during that seven hours I, the boss of this big plant, spend my time taking telephone orders; lots of times I do. You say that it isn't my duty, though; well, I wouldn't miss an order because it wasn't my duty, but of course, I have something else to do besides taking orders. As a matter of fact we have a young man to take orders. You ask if it is only when he isn't doing his duty that I take up the 'phone and take an order; no, sir; I am sitting here and my 'phone is right there and it is very easy for me to pick up a 'phone and take an order. If my young man isn't attending to his business, isn't at the 'phone, then I might happen to pick it up. You say that from what you gather the word "Coca-Cola" is never used by our customers by mail, telephone or otherwise so far as I know; oh, yes, lots of it. You then ask whether we have other people who give us orders over the telephone and call it "Coca-Cola"; Judge, that is a question I don't believe that I can answer, but they all call it "coke" and I know what they mean when they say "ship me two cases of 'coke.'" Yes, sir; I think I have customers who send telephone orders and call it "Coca-Cola," I have got orders for "Coca-Cola." No, sir; the men who call it "Coca-Cola" are not in the minority, we have several that call it "Coca-Cola." We have lots of them that call it "Coca-Cola" and lots of them

(Deposition of T. C. Lupton.)

"coke." No, sir; as a business man I can't say what proportion of our trade call it "Coca-Cola" and what proportion call it "coke," I can't answer that question [641] because I don't know.

(Plaintiff here tendered and offered in evidence the bunch of letters referred to by the witness as Exhibit #152 and also the bottle referred to as Plaintiff's Exhibit #153.)

Deposition of C. D. Kingston, for Plaintiff.

C. D. KINGSTON.

Direct Examination by Mr. ROGERS.

I am a druggist, located at 322 Main St., Dennison, Tex. The name of my store is C. D. Kingston Drug Company. I have been in the drug business in Dennison for 23 or 24 years, but I have only had a soda-fountain for six years. Yes, sir; I dispense "Coca-Cola" at my fountain. Yes, sir; it is a drink that is in demand. Yes, sir; I am about the fountain myself so that I can hear people when they come in and ask for the drinks they want and know the names that they use. No, sir; the name "Coca-Cola" is not invariably used in full by people who consume "Coca-Cola" at my fountain. Some ask for "Coca-Cola," some "coke," some "shot in the arm," some "dope." When a man asks for "coke" I understand that he means "Coca-Cola" and "Coca-Cola" is what I supply. I have never had it rejected on the ground that it was not what was asked for. I don't know how long I have known these words "coke," "dope," "shot in the arm," etc.,

(Deposition of C. D. Kingston.)

to be used as nicknames. It has been so long I have never paid any attention. It has been pretty near ever since I have been selling "Coca-Cola,"—for five or six years—ever since I had a fountain. You ask if I have ever had an interview with a man representing the Koke Company of Texas, with respect to the product "Koke"; I couldn't tell you whether it was "K-O-K-E" or "C-O-K-E"; I know I had a representative from Dallas trying to sell "Koke" to take the place of "Coca-Cola." There was a gentleman with a Mr. Boyd who was with the Texas Drug Company, he introduced me to this gentleman,—I have forgotten his name—he asked me would I take a drink, and we lived in a dry town and I told him I would; he got a leather covered flask from his pocket and started to fixing a "Coca-Cola" highball; he said "just try one" and gave me the glass and he poured out one and said "mix the two and taste the two and see which is better, if you can tell the difference"; I told him, no, that I didn't care to take a "Coca-Cola," I just had one, I thought [642] he was going to give me a drink. He said he was selling "Koke" at a cheaper price than "Coca-Cola"—selling it at $1.25 a gallon. I told him I didn't care to put any "Koke" in; that I was doing a nice business on "Coca-Cola" and I thought it was a steal, that he was putting his out; well, he kind of got mad at that and didn't think it was a steal. He said he was vice-president of the Company and I told him I didn't give a dam if he was president of the Company, that was what I thought just the same. He didn't stay

(Deposition of C. D. Kingston.)
very long and that was about the sum and substance of it.

Cross-examination by Mr. DART.

I have handled "Coca-Cola" altogether, nothing but "Coca-Cola." Yes, sir; we have a pretty nice business in it, we do something over—well, from four to five hundred gallons of it a year. We have never handled any other kind of soft drinks resembling "Coca-Cola." Yes, sir; I have come over here from Dennison to testify at the request of Mr. Pierce. Dennison is about seventy or eighty miles from Dallas. No, sir; I did not come at my own expense. I came at their expense. I came down with Mr. Peace instead of Mr. Pierce.

Deposition of F. L. Skillen, for Plaintiff.

F. L. SKILLEN.

Direct Examination by Mr. ROGERS.

I am a druggist and live in Dallas, Texas. My place of business is located at 812 Commerce St. I operate a soda-fountain at my drug-store and have done so for eight years. Yes, sir; I deal in and dispense "Coca-Cola" at my fountain. Yes, sir; I am at the fountain myself so that I can hear people when they come in and ask for drinks. Yes, sir, I know the names they use for the various drinks they want. The people at my fountain indicate that they desire the product of the Coca-Cola Company by calling for "Coca-Cola" and "coke." When a person calls for "coke" I understand that he means "Coca-Cola" and "Coca-Cola" is what I supply in

(Deposition of F. L. Skillen.)

response to such demand. I have never had it rejected as not what was asked for. I would say that about twenty-five per cent of the people call it "coke." I have known "coke" to be applied as a nickname for "Coca-Cola" ever since I have been serving it, which was fifteen years. **[643]** I couldn't say directly that I ever had an interview with a salesman representing the Koke Company of Texas. I had an interview with a gentleman selling "Koke"—I don't know whether of Texas or where—but he was selling a product that he called "Koke." He came in and introduced himself—I can't remember his name, in fact I couldn't remember your name that you told me yesterday, but he said he was selling "Koke" and I told him that I didn't handle it. He asked me why I didn't handle it and I told him we didn't handle anything but "Coca-Cola." He says "what are you going to do when people call for 'Koke?'" I said, "I am going to give them 'Coca-Cola.'" "Well," he said "don't you know that you lay yourself liable to prosecution?" I told him I didn't think I did, that I didn't think any of my customers wanted anything but "Coca-Cola" and that it was a free country and they had every opportunity in the world to prosecute if they felt that way, that we didn't sell anything but "Coca-Cola" and would continue not to sell anything but "Coca-Cola." He then told me I ought to handle it. I asked his price and he said $1.25 a gallon, and I told him "Coca-Cola" didn't cost us that much the way we bought it. He was very persistent and I

(Deposition of F. L. Skillen.)
guess he must have talked for about three-quarters of an hour and I finally showed him the door. I told him that we believed and thought we were right, that ninety-nine out of every hundred that called for "coke" wanted "Coca-Cola"—that I wouldn't state that positively, but that was our belief and we believed it so strong that that's what we gave them and we didn't have anyone to kick on it. He stated his product was cheaper than coca-cola. We took over the Browder Pharmacy from the U. S. Court. Yes, sir; we found among the assets what we supposed was "Coca-Cola." There was a barrel which we supposed was "Coca-Cola" and I inquired of the soda-man if he had any "Coca-Cola" on hand and he said, yes, about ten or fifteen gallons. I passed in the back room and saw a red barrel sitting there and passed on out and we served all of that. Yes, sir; we served it as "Coca-Cola." You ask what made me think it was "Coca-Cola"; why, I suppose it was innocence more than anything else, we don't serve anything else but "Coca-Cola" and didn't suppose anybody else did. I asked him did he have any "Coca-Cola" on hand and he said, yes. You ask if the color had anything to do with it; yes, it was red and I supposed it was [644] "Coca-Cola." You again ask if the color of the barrel had anything to do with it; yes, the color was the "Coca-Cola" color. When that was sold and we ordered a barrel of "Coca-Cola" delivered to us to the store the salesman from the jobbers said they hadn't been handling "Coca-Cola" over there and then I told him it must

(Deposition of F. L. Skillen.)

not have been "Coca-Cola" that we had and then I asked the soda-man about it and he said it was not; and we had an employee at that time, who had formerly been with Mr. Browder, by the name of Mr. Sam Weir, and I asked Sam if that was "Coca-Cola" and he said, "No." (The conversation detailed above and the reply offered in the conversation by the employee are objected to by the defendants because hear-say. Objection overruled. Exception.)

Cross-examination by Mr. DART.

I took over that store April 11th, I believe, 1912. The conclusion that we arrived at was that it was a store that had been selling "Koke." The Coca-Cola people didn't tell me that; I said the salesman from the wholesale drug house who had Mr. Browder's business, and he had never been able to sell him "Coca-Cola." Our dealings are not through the Coca-Cola Company but through a jobber. It was patent to me that the house I took over was not handling "Coca-Cola." I on the contrary handled "Coca-Cola" strictly and do not handle anything else. I couldn't answer whether "coke" is the only name I ever heard "Coca-Cola" called by or not; we may have had a few calls, and I believe we have, where they call for "dope" but those are so few that they have been exceptions. I know of no other name. I have been my own master as a druggist eight years and prior to that time I was serving somebody else. I am now twenty-eight years old. Before I was thirteen years old I was working for

(Deposition of F. L. Skillen.)

my father. I was never employed in any other way except for him and for myself. No, sir; I have not always had the extensive business I now have. The service I have known anterior to being my own master was always in Dallas. Yes, sir, we in the trade know that "Coca-Cola" has its trade name, "Coca-Cola." You ask if we offer "Coca-Cola" to the people as "coke" or "dope" or anything of that kind; we offer it in this way, when they call for "coke" we give them "Coca-Cola," but we [645] don't push it or advertise it by any other name than "Coca-Cola," and, in fact, we don't push it or advertise it at all. Yes, sir; I generally call for "coke" myself, when I go to my own fountain, I say "give me a 'coke.'" You ask if I use that name with people generally; I hardly ever speak of "Coca-Cola" unless somebody asks me do I think "Coca-Cola" hurts them or something of that kind. I have had such inquiries, yes. I have had them to ask me if there was cocaine or dope in it as they call it. I have explained to them that so far as I know it hasn't a thing, for my information comes from the Coca-Cola Company. I haven't had, recently, any such inquiry. I don't think I have had one within a year. In fact, I believe the only time I remember—I couldn't say how long it has been, it has been sometime—I went to Dr. Smart's office and was examined for the Coca-Cola Company as an habitual user of "Coca-Cola"; at that time there was quite a number examined, and some one asked me where I had been and I made the remark and I

(Deposition of F. L. Skillen.)

believe that is the last time I had a discussion as to what it contained. I was examined at the request of the Coca-Cola Company, to see what effect it had on me. I don't know why they should have done that. My conclusion was that it was because they wanted evidence to rebut the belief that "Coca-Cola" was harmful to you. I don't know how long ago it was that I was examined, I couldn't say, about two years I think. A lady called on me, Mrs. Weaver, and asked me to be examined. I couldn't say who she was representing because I didn't know but she asked me if I was an habitual used of "Coca-Cola" and I told her I supposed I would be so called, and I told her I drank five or ten a day and she asked me how long I had drunk it and I told her ever since I could remember, nearly, and then I went to a physician and stood a physical examination. It was about the same kind of examination as I stood when I went up for life insurance. They tested my heart, blood pressure and urinary analysis. I never heard anything further from it, and I don't know what his report was. After that examination somebody asked me where I had been and I told them and we naturally entered into a discussion, whether it was harmful or not. **[646]** No, the person I was discussing it with did not take the position that it was harmful, he asked me what I thought about it—he also was a drinker of "Coca-Cola." The discussion turned principally on the contents of "Coca-Cola." He asked me if I thought there was cocaine in the drink. I sell very little cocaine now. I don't sup-

(Deposition of F. L. Skillen.)

pose I have sold one-eighth of an ounce in five years. There has been a law against it since I have been in the drug business, and that is the reason I don't sell it. Only in a casual way do I come in contact with cocaine users, we sometimes have a call. I have not come in contact with any of them, enough to know that they call it "coke." The class of trade in my location is very high and a party who wants to take cocaine for a toothache claimingly, they generally ask can they get cocaine. It might be an habitual user refers to it as "coke," I can't say as to that. Yes, sir; cocaine has a sort of black eye professionally, the law prohibits the sale of it. A law was passed before I was twenty-one years old. No, sir; I don't recollect the discussion about the drug which caused the law to be passed. I handle what I guess you would call a large quantity of "Coca-Cola." I should say it is about thirty-five per cent of my soda business. To me it is a lucrative business and is a business which I am anxious, of course, to keep. I couldn't say whether I would want to dispense with "Coca-Cola" or not, I would hate to dispense with it and let somebody else sell it, though. I want my share of the patronage. It seems to be a business that was created without any effort of mine. I have seen root beer barrels and "Dr. Pepper" barrels—I haven't had a root beer barrel in several years. No, sir; Dr. Pepper does not put up his drink now. "Pepper" was blue and the root beer yellow. They have ceased to do business, so far as I

(Deposition of F. L. Skillen.)

know. I have had some recently but it didn't come in barrels.

Yes, sir; "Coca-Cola" and the Koke Company are the only ones that use barrels, so far as I know—I don't know whether "Koke," uses barrels. You say that I don't know how that syrup got into that barrel and don't know really that it was not "Coca-Cola"; the man that was employed there said it was not "Coca-Cola." **[647]** No, sir; he isn't with me now. You ask if I tasted it myself to see whether it was "Coca-Cola" syrup; I don't think I would be qualified to taste it and say whether it was "Coca-Cola" or not. You ask if I got any complaints from the drinkers at the fountain that it was not "Coca-Cola"; it is so far back that if there had been any complaints I wouldn't have known anything about it, but I sold it laboring under the impression that it was "Coca-Cola." No, I don't know now that it was not "Coca-Cola." Yes, that is an inference from his statement to me. I haven't got any now. The barrel was thrown out, I guess. The Coca-Cola people did not take it up—they take up their own barrels. I couldn't say as to whether or not numbers of "Coca-Cola" barrels are sold as second-hand barrels, they buy all the barrels we empty. I couldn't say why they didn't take this particular barrel, they just said it wasn't their barrel. I asked the driver about it. I couldn't say how it differed from the "Coca-Cola" barrel. I never saw the barrel but once and I just glanced at it. Yes, sir; I have seen other "Coca-Cola" barrels and I didn't

(Deposition of F. L. Skillen.)

notice any distinction between this barrel and other "Coca-Cola" barrels, it was painted red, No, sir; I don't know that it wasn't a "Coca-Cola" barrel, I couldn't swear to it at all.

Redirect Examination by General CRANE.

Yes, at the time I had my physical examination a lady by the name of Mrs. Weaver asked me to be examined. I didn't ask who she was representing but I supposed the Coca-Cola Co. You ask if I don't know that it was during the time that the case of the Coca-Cola Company against Jeff McLemore was pending in the Federal Courts of Houston, in which he was charged with libel for publishing that "Coca-Cola" was a dope deleterious to health and that Dr. Smart was testing habitual users of "Coca-Cola" to see what effect it had on them; no, sir; I don't know about that. I know Dr. Smart was acting for the Coca-Cola Company but I don't know about the case. I suppose it was about two years ago, may be a little longer. [648]